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THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2018

Public sitting

held on Friday 29 June 2018, at 10 a.m., at the Peace Palace,

President Yusuf presiding,

***in the case concerning* Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar *v.* United Arab Emirates)**

VERBATIM RECORD

ANNÉE 2018

Audience publique

tenue le vendredi 29 juin 2018, à 10 heures, au Palais de la Paix,

sous la présidence de M. Yusuf, président,

***en l'affaire relative à l'*Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Qatar c. Emirats arabes unis)**

COMPTE RENDU

Present:	President	Yusuf
	Vice-President	Xue
	Judges	Tomka
		Abraham
		Bennouna
		Cançado Trindade
		Gaja
		Sebutinde
		Bhandari
		Robinson
		Crawford
		Gevorgian
		Salam
	Judges *ad hoc*	Cot
		Daudet
	Registrar	Couvreur

Présents : M. Yusuf, président
Mme Xue, vice-présidente
MM. Tomka
Abraham
Bennouna
Cançado Trindade
M. Gaja
Mme Sebutinde
MM. Bhandari
Robinson
Crawford
Gevorgian
Salam, juges
MM. Cot
Daudet, juges *ad hoc*

M. Couvreur, greffier

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The PRESIDENT: Please be seated. The sitting is now open. The Court meets this morning to hear the second round of oral observations of Qatar on its Request for the indication of provisional measures. I now invite Mr. Lawrence Martin to take the floor. You have the floor, Sir.

Mr. MARTIN:

I. THE COURT HAS PRIMA FACIE JURISDICTION

1. Mr. President, distinguished Members of the Court, good morning. It is an honour to appear before you today on behalf of the State of Qatar. It falls to me to open Qatar's second round this morning by addressing the Court's prima facie jurisdiction over the merits of the case. In our view, we have clearly met our burden in this respect and I will not need more than 20 minutes to explain why.

2. I begin with the first jurisdictional requirement, the existence of a dispute concerning "the interpretation or application" of the Convention. My colleague, Mr. Donovan, explained the content of this requirement on Wednesday[1]. He also discussed the relevant facts at length. Those facts leave no doubt that the Parties have a disagreement concerning the interpretation or application of the Convention, and that, prima facie, the acts alleged are capable of contravening rights under the Convention[2]. There is no need for me to revisit the facts today, especially since Mr. Olleson made no effort to deny them yesterday.

3. Mr. Olleson took an altogether different approach. He argued that the Convention "does not apply to differences of treatment based on nationality"[3]. The result, he said, is that "the dispute . . . falls outside the scope *ratione materiae* of the Convention"[4]. In our view, this argument only serves to confirm the existence of a dispute by underscoring the Parties' disagreement over the interpretation and application of the Convention. It is also premised on a wholly erroneous interpretation of the Convention, as Ms Amirfar will show later when discussing the plausibility of the rights Qatar is asserting.

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[1] CR 2018/12, pp. 21-22, paras. 13-15 (Donovan).

[2] CR 2018/12, pp. 22-24, paras. 15-21 (Donovan).

[3] CR 2018/13, p. 48, para. 60 (Olleson).

[4] CR 2018/13, p. 48, para. 60 (Olleson).

4. I move then to the second jurisdictional requirement; namely, that the dispute be one that is "not settled by negotiation or the procedures expressly provided for in the Convention"[5]. I will deal with the question of negotiations first.

5. The Parties agree that Article 22 of the Convention requires a genuine attempt to negotiate with a view to resolving the dispute. But yesterday Professor Pellet argued that Qatar had made no such effort. We very much disagree. In our view, the record before the Court could scarcely be any clearer. As Mr. Donovan explained, Qatar has made multiple, genuine attempts to negotiate but the UAE has rebuffed those attempts at every turn[6].

6. During his intervention yesterday, Professor Pellet presented you with a misleading narrative. He gave you a timeline suggesting that Qatar's attempts to negotiate only began in April 2018 with its letter to the UAE requesting negotiations concerning its violations of the Convention[7]. He casually dismissed all that came before the letter with a wave of his hand, saying the facts showed only that Qatar previously expressed willingness to negotiate, not that it actually attempted to negotiate[8]. With all due respect to my learned friend, the actual facts between June 2017 and April 2018 tell a very different story.

7. As Mr. Donovan explained, the dispute between the Parties crystallized no later than September 2017[9]. In the face of Qatar's calls for dialogue, the UAE repeatedly and unequivocally stated that there was "nothing to negotiate"[10]. Qatar nevertheless persisted in its pursuit of talks.

8. For example, His Highness the Emir of Qatar travelled to Kuwait in December 2017 for the annual summit of the Gulf Cooperation Council, or GCC[11]. He did so expecting to talk with his Emirati counterpart, with the kind facilitation of His Highness the Emir of Kuwait[12]. Unfortunately,

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[5] International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 4 Jan. 1969, United Nations, *Treaty Series (UNTS)*, Vol. 66, p. 195.

[6] CR 2018/12, pp. 25-30, paras. 27-42 (Donovan).

[7] CR 2018/13, p. 25, para. 17 (Pellet).

[8] CR 2018/13, p. 23, paras. 11-12 (Pellet).

[9] CR 2018/12, pp. 22-24, paras. 16-20 (Donovan).

[10] CR 2018/12, p. 25, paras. 27-28 (Donovan).

[11] CR 2018/12, pp. 25-28, paras. 34-36 (Donovan).

[12] CR 2018/12, pp. 25-28, paras. 34-36 (Donovan).

however, the UAE's Head of Government declined to attend, the anticipated dialogue never happened and the summit ended abruptly after less than a day[13].

9. Mr. Donovan discussed the GCC summit in detail on Wednesday. Yesterday, Professor Pellet ignored it entirely; we heard not a word. The reason is obvious. The attendance at the GCC summit by His Highness the Emir by itself constituted a genuine attempt to negotiate.

10. Although he dared not say so directly, Professor Pellet did intimate that the failed GCC summit should not count as a genuine attempt to negotiate because there is no public record of the disputed human rights issues being raised in Kuwait[14]. My friend is mistaken. The record is clear that the human rights violations had been discussed and put on the table at the highest levels, and that His Highness the Emir of Qatar went to Kuwait viewing the GCC summit as a "golden opportunity" to start a dialogue with the UAE, including on the "bad humanitarian situation . . . such as separation of families", the very subject-matter of the dispute before the Court[15].

11. There were also other genuine attempts to negotiate. In April 2018, for example, there was an Arab League summit to which the Permanent Representative of Qatar travelled hoping to discuss all issues implicated by the Gulf crisis[16]. Even before his arrival, however, the UAE and other States involved decided that the crisis would not be on the agenda. To the contrary, they insisted that any solution would have to take place under the auspices of the GCC[17].

12. I trust the irony of this will not be lost on the Court. The UAE and others took the view that the solution lay with the GCC. Yet at the same time, it specifically refused to engage on the issue in the GCC. Mr. President, if you'll pardon the American literary reference, it is hard to imagine a more perfect example of a Catch-22.

13. This then is the context in which Qatar wrote to the UAE inviting it to negotiate concerning CERD. The letter — which by itself would be sufficient to show a genuine attempt to

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[13] CR 2018/12, p. 28, paras. 35-36 (Donovan).

[14] See CR 2018/13, pp. 23-24, paras. 12-13 (Pellet).

[15] Ministry of Foreign Affairs of the State of Qatar, Foreign Minister: Qatar Sees Any GCC Meeting Golden Opportunity for Civilized Dialogue, 22 Oct. 2017, https://www.mofa.gov.qa/en/all-mofa-news/details/2017/10/22/foreign-minister-qatar-sees-any-gcc-meeting-golden-opportunity-for-civilized-dialogue.

[16] See Nawal Sayed, *6 Arab leaders absent from 29th Summit, Syria not on table*, 15 April 2018, https://www.egypttoday.com/Article/2/47919/6-Arab-leaders-absent-from-29th-Summit-Syria-not-on.

[17] See *Saudi FM says Qatar crisis not on the table at Arab League Summit*, 13 April 2018, http://www.thebaghdadpost.com/en/story/26062/Saudi-FM-says-Qatar-crisis-not-on-the-table-at-Arab-League-summit.

negotiate — came at the end of a months' long process, not at the beginning of the process. Professor Pellet suggested yesterday that this letter was not sent in good faith. But he did not tell us why. Surely, if the UAE thought that, it could have responded expressing its views. Or it could have responded proposing an alternative schedule for negotiations. Or, at very least, it could have responded stating that it was taking the matter under advisement. But it did none of those things. It never bothered to respond at all. It simply ignored Qatar's request, as it had all previous attempts to engage with it.

14. Mr. President, distinguished Members of the Court, on this record there can be no serious question but that Qatar did everything it could be reasonably expected to do. It made multiple genuine attempts to negotiate with the UAE concerning its human rights violations but the UAE rejected all those efforts. Nothing more can be required.

15. This brings me to the other avenue mentioned in Article 22: "the procedures expressly provided for in the Convention"[18].

16. Mr. President, yesterday we heard Professor Pellet suggest that there is no reason why the Court should not, at this stage, definitively decide that this precondition has a cumulative and successive character[19]. Even setting aside the fact that just last year the Court declined to make exactly the ruling Professor Pellet now asks it to, his suggestion must be treated with great caution for at least two reasons.

17. *First*, Professor Pellet would have you decide this issue without benefit of full argument and evidence. Such an approach would not be consistent with the sound administration of justice. As former President Jiménez de Aréchaga wisely observed, further pleadings and other information may well change views or convictions previously held. To exclude this *a priori* would amount to impermissible prejudgment[20]. It is therefore no coincidence that the Court has stated in virtually all of its orders on provisional measures that its decision does not prejudge the question of

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[18] CERD***, Art. 22.***

[19] CR 2018/13, p. 22, para. 9 (Pellet).

[20] *Nuclear Tests (Australia* v. *France), Interim Protection, Order of 22 June 1973, I.C.J. Reports 1973*; declaration of Judge Jiménez de Aréchaga, p. 107; *Nuclear Tests (New Zealand* v. *France), Interim Protection, Order of 22 June 1973, I.C.J. Reports 1973*; declaration of Judge Jiménez de Aréchaga, pp. 143-144.

jurisdiction[21]. This is also why the Court refused to decide this very issue in *Ukraine* v. *Russian Federation* last year.

18. *Second*, Professor Pellet would have you kill two birds with one stone and prejudge the issue of jurisdiction not just in this case, but also in the case between Ukraine and the Russian Federation, where, not coincidentally, he also acts as counsel for respondent. Indeed, the Court should be extra cautious here, given that the *Ukraine* v. *Russian Federation* case is at a more advanced stage than this one.

19. Given all this, Professor Pellet's argument on the nature of the Article 22 precondition is, in our view, premature. It is also not terribly convincing. When the Court examines the preparatory works to which Professor Pellet devoted so much time yesterday, it will undoubtedly agree that there is nothing to refute the conclusions reached by Judges Owada, Simma, Abraham, Donoghue and Gaja in their joint dissent in *Georgia* v. *Russian Federation*. I quote from their joint opinion with respect to the Three-Power amendment, to which Professor Pellet devoted so much attention yesterday:

> "The clear impression . . . emerges that the three Powers' intent in proposing their amendment was not to impose a further condition resulting in more limited access to the Court than under the earlier text. There is nothing to indicate that the amendment was aimed at making resort to the special procedures under Part II mandatory where direct negotiations had failed. More likely, the amendment was intended to make clear that recourse to these special procedures figured among the possible avenues for negotiated settlement. That is why it was regarded by the delegates as merely a 'useful addition or clarification' and was easily adopted, not as a change in the text to make it more restrictive but as a natural, and almost self-evident, clarification."[22]

20. Professor Pellet's other arguments were equally unconvincing. Compromissory clauses in human rights instruments that provide for recourse to arbitration in the event that negotiations fail could not be more different from Article 22. For example, one look at Article 30 of the Convention against Torture is enough to show that, on its plain terms, it establishes cumulative and

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[21] See, e.g. *Jadhav Case (India* v. *Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017,* para. 60; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 140, para. 105; *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II),* p. 1171, para. 98.

[22] *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*; joint dissenting opinion of President Owada, Judges Simma, Abraham and Donoghue and Judge *ad hoc* Gaja, p. 157, para. 47.

successive preconditions to the Court's jurisdiction[23]. That is not the case here, as Professor Pellet himself admitted yesterday[24].

21. We also do not see how insisting on conciliation before recourse to the Court would promote the objectives of the Convention. Both negotiations and the CERD procedure depend "on an understanding between the parties and their desire to seek a negotiated solution"[25]. In the event that negotiations fail, it would be absurd to ask an aggrieved State to pursue a different way of doing exactly the same thing before asking the Court to vindicate its rights, all the more since the committee procedure does not entail a binding decision.

22. Finally, Mr. President, Professor Pellet offered one further argument: that Qatar's submission of a communication to the CERD Committee somehow bars recourse to the Court. He adverted to a veritable potpourri of potential legal arguments, including *lis pendens*, *electa una via* and estoppel[26]. But he did not bother to explain how any of them might apply in this case[27]. Our response here can be very brief.

23. *First*, Professor Pellet's argument assumes its own conclusion. That is, you could only find that Qatar's communication to the CERD Committee precludes the Court's jurisdiction if you accept the UAE's argument that the preconditions in Article 22 are cumulative and must be followed sequentially. But, for the reasons I just explained, this is not an issue you can resolve now. Qatar's genuine attempts to negotiate are enough to establish your prima facie jurisdiction.

24. *Second*, there is no principle in general international law that States cannot simultaneously pursue binding and non-binding methods of dispute resolution, including proceedings before this Court. Indeed, the opposite is true. In its Judgment on Preliminary

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[23] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 Dec.1984, 1465 *UNTS* 85:

> "Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice."

[24] See CR 2018/13, p. 21, para. 7 (Pellet).

[25] *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*; joint dissenting opinion of President Owada, Judges Simma, Abraham and Donoghue and Judge *ad hoc* Gaja, p. 156, para. 43.

[26] See CR 2018/13, p. 27, paras. 23-24 (Pellet).

[27] See CR 2018/13, p. 27, paras. 23-24 (Pellet).

Objections in *Nicaragua* v. *United States of America*, for instance, the fact that the parties were engaged in regional negotiations through the Contadora process did not constitute a bar to the Court's jurisdiction. The Court stated: "the existence of active negotiations in which both parties might be involved should not prevent both the Security Council and the Court from exercising their separate functions under the Charter and the Statute of the Court"[28]. There is no reason to take a different approach here.

25. *Third*, Article 16 of the Convention specifically states that the "provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes . . .". Although this provision concerns proceedings outside the ambit of the Convention, it nevertheless does provide ancillary support for the proposition that recourse to one method of dispute resolution poses no bar to the simultaneous recourse to another.

26. Mr. President, we respectfully submit that the reasons for Qatar's communication to the CERD Committee must be understood in the overall factual context. Consistent with its prior efforts to engage diplomatically with the UAE, Qatar submitted the communication because it desperately sought an amicable settlement of this dispute before filing its Application, and because it did not see the CERD procedure as inhibiting its access to this Court in any way. Having reasonably concluded that further exchanges would be futile, it was entirely within Qatar's right to file its Application instituting these proceedings before the Court.

27. Mr. President, distinguished Members of the Court, thank you very much for your patient attention. May I ask that you kindly invite Professor Klein to the podium once more?

The PRESIDENT: I thank Mr. Martin and I invite the next speaker, Professor Klein. Vous avez la parole.

M. KLEIN : Merci, Monsieur le président.

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[28] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 440, para. 106.

II. L'EXIGENCE DE L'ÉPUISEMENT DES VOIES DE RECOURS INTERNES NE S'APPLIQUE PAS EN L'ESPÈCE

1. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, les Emirats arabes unis ont affirmé hier par la voix du professeur Treves que l'exigence de l'épuisement des voies de recours internes, classiquement requise en droit international pour l'exercice de la protection diplomatique, n'avait pas été satisfaite en l'espèce. La demande en indication de mesures conservatoires présentée par Qatar devrait de ce fait être déclarée *prima facie* irrecevable[29]. Je voudrais vous montrer très brièvement ce matin que cet argument se heurte à une triple objection.

A. La Cour n'a pas à se prononcer sur des questions de recevabilité lorsqu'elle est saisie d'une demande en indication de mesures conservatoires

2. En premier lieu, la Cour n'est pas appelée à se prononcer sur des questions de recevabilité lorsqu'elle est saisie d'une demande en indication de mesures conservatoires. La question a certes été évoquée dans l'ordonnance de 1996 dans l'affaire *Cameroun c. Nigéria*, comme l'ont rappelé nos estimés contradicteurs. Mais c'est bien tout ce que la Cour a fait alors : évoquer la question, en concluant qu'elle n'avait pas à la trancher en l'espèce. Jamais depuis lors — et cela fait tout de même plus de vingt ans —, cette éventuelle nécessité d'envisager la recevabilité *prima facie* d'une demande en indication de mesures conservatoires n'a-t-elle été envisagée. Ce ne sont pourtant pas les occasions qui ont manqué. Dans pas moins de sept affaires différentes, la Cour a été saisie de demandes en indication de mesures conservatoires, puis s'est trouvée confrontée à des contestations de la recevabilité des demandes au fond[30]. Dans aucune d'entre elles, la Cour n'a jugé pertinent ou nécessaire de se prononcer sur la question d'une recevabilité *prima facie* des demandes en indication de mesures conservatoires. Cette abstention ne doit rien au hasard. Bien plus que les questions de compétence, celles touchant à la recevabilité sont souvent intimement liées au fond de l'affaire. C'est particulièrement vrai pour l'exception de non-épuisement des voies de recours

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[29] CR 2018/13, p. 28, par. 2 (Treves).

[30] Voir, entre autres, *LaGrand (Allemagne c. Etats-Unis d'Amérique), mesures conservatoires, ordonnance du 3 mars 1999, C.I.J. Recueil 1999 (I)*, p. 9 ; *Activités armées sur le territoire du Congo (République démocratique du Congo c. Ouganda), mesures conservatoires, ordonnance du 1er juillet 2000, C.I.J. Recueil 2000*, p. 111 ; *Mandat d'arrêt du 11 avril 2000 (République démocratique du Congo c. Belgique), mesures conservatoires, ordonnance du 8 décembre 2000, C.I.J. Recueil 2000*, p. 182 ; *Avena et autres ressortissants mexicains (Mexique c. Etats-Unis d'Amérique), mesures conservatoires, ordonnance du 5 février 2003, C.I.J. Recueil 2003*, p. 77 ; *Questions concernant l'obligation de poursuivre ou d'extrader (Belgique c. Sénégal), arrêt, C.I.J. Recueil 2012 (II)*, p. 423 ; *Immunités et procédures pénales (Guinée équatoriale c. France), mesures conservatoires, ordonnance du 7 décembre 2016, C.I.J. Recueil 2016 (II)*, p. 1148.

internes, qui impose l'examen de points de fait à l'égard desquels la Cour ne dispose pas d'éléments suffisants pour entrer à ce stade très préliminaire de la procédure. Il n'existe donc aucune raison pour la Cour de s'écarter de l'approche qu'elle a suivie de manière systématique dans sa jurisprudence jusqu'ici en n'abordant pas la question d'une éventuelle recevabilité *prima facie* des demandes en indication de mesures conservatoires. Cela n'empêche évidemment en rien que ces questions soient traitées au stade pertinent de l'instance ; comme la Cour ne manque jamais de le rappeler, sa décision relative aux mesures conservatoires «ne préjuge en rien la question de la compétence de la Cour pour connaître du fond de l'affaire, ni aucune question relative à la recevabilité de la requête»[31].

B. En tout état de cause, l'exigence de l'épuisement des voies de recours internes ne s'applique pas aux demandes présentées par un Etat à la fois en son nom propre et au nom de ses ressortissants

3. En tout état de cause, à supposer même que la Cour estime nécessaire de se prononcer sur une telle question de recevabilité dès ce stade de la procédure, elle devrait constater que la demande présentée par Qatar est *prima facie* recevable, puisque l'exigence de l'épuisement des voies de recours internes ne s'applique pas aux demandes présentées par un Etat à la fois en son nom propre et au nom de ses ressortissants. C'est là le deuxième obstacle à l'argument soulevé par les Emirats arabes unis. Le professeur Treves a fait référence, pour supporter son argumentation, au fait que l'épuisement des recours internes était spécifiquement requis par l'article 11, paragraphe 3 de la convention sur l'élimination de toutes les formes de discrimination raciale et qu'il devrait dès lors être tout autant requis devant la Cour[32]. Mais, ainsi que la chose a déjà été rappelée à la Cour dans de précédents débats, l'article 11, paragraphe 3 dispose que l'exigence de l'épuisement des recours internes s'applique «conformément aux principes de droit international généralement reconnus»[33]. Or, quel sort le droit international réserve-t-il à l'exigence de l'épuisement des recours internes dans un cas où, comme celui dont la Cour est saisie aujourd'hui, l'Etat demandeur agit à la fois en son nom propre et au nom de ses ressortissants ? La Cour a déjà été confrontée à cette

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[31] *Affaire Jadhav (Inde c. Pakistan), mesures conservatoires, ordonnance du 18 mai 2017, C.I.J. Recueil 2017,* p. 245, par. 60.

[32] CR 2018/13, p. 29, par. 5 (Treves).

[33] CR 2010/8, p. 47, par. 20 (Pellet), [*Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Géorgie c. Fédération de Russie)*].

question dans le passé, et elle y a apporté une réponse très claire. Dans l'affaire *Avena*, où était en cause l'application de l'article 36, paragraphe 1 de la convention de Vienne sur les relations consulaires, la Cour a observé que

> «toute violation des droits que l'individu tient de l'article 36 risque d'entraîner une violation des droits de l'Etat d'envoi et … toute violation des droits de ce dernier [est susceptible] de conduire à une violation des droits de l'individu. Dans ces circonstances toutes particulières d'interdépendance des droits de l'Etat et des droits individuels, le Mexique peut, en soumettant une demande en son nom propre, inviter la Cour à statuer sur la violation des droits dont il soutient avoir été victime à la fois directement et à travers la violation des droits individuels conférés à ses ressortissants … L'obligation d'épuiser les voies de recours internes ne s'applique pas à une telle demande.»[34]

4. Semblable interdépendance des droits de l'Etat et des droits individuels se retrouve tout autant dans la convention sur l'élimination de toutes les formes de discrimination raciale. Et la même conclusion que celle atteinte dans l'affaire *Avena* s'impose donc dans notre cas : l'obligation d'épuiser les voies de recours internes ne s'applique pas à une demande fondée sur la convention et introduite par un Etat tant en son nom propre qu'au nom de ses ressortissants.

C. A titre très subsidiaire, les Emirats arabes unis ne peuvent démontrer que la demande présentée par Qatar est irrecevable *prima facie*

5. A titre très subsidiaire, enfin, même si la Cour devait par impossible conclure que l'exigence de l'épuisement des recours internes est applicable dans la présente espèce, force est de constater que les Emirats arabes unis ne peuvent démontrer que la demande présentée par Qatar est irrecevable *prima facie*. Il demeure, à tout le moins, des doutes considérables quant au fait qu'il ait existé aux Emirats arabes unis, pendant la période pertinente et jusqu'à ce jour, des voies de recours internes efficaces accessibles aux ressortissants qataris, qui leur auraient permis de contester les mesures discriminatoires dont ils étaient victimes. Les rapports internationaux et nationaux déjà mentionnés par Qatar font état à ce sujet des circonstances exceptionnelles qui ont empêché les Qataris d'agir en justice aux Emirats arabes unis à partir de juin 2017 : impossibilité de comparaître en personne du fait de l'interdiction de séjour et d'entrée en territoire émirati, difficultés considérables à s'assurer une représentation juridique par le biais d'avocats locaux en raison du climat général d'hostilité à l'encontre de Qatar et des Qataris, difficultés tout aussi

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[34] *Avena et autres ressortissants mexicains (Mexique c. Etats-Unis d'Amérique), arrêt, C.I.J. Recueil 2004 (I)*, p. 36, par. 40.

considérables pour obtenir des procurations ou mandats valables pour assurer d'autres types de représentations en justice[35]. Il est éminemment symptomatique, à cet égard, que nos contradicteurs se soient limités à produire en tout et pour tout une procuration de ce type[36], et aucune — aucune — décision judiciaire qui aurait été rendue sur requête de Qataris et qui viendrait confirmer l'accessibilité complète des tribunaux émiratis aux Qataris, comme voudrait vous en convaincre la Partie adverse. Rien, dans les pièces produites en début de cette semaine, ne vient donc contredire les constats opérés dans les rapports que je viens d'évoquer. Il apparaît décidément bien difficile, dans ces circonstances, de parler d'une éventuelle irrecevabilité *prima facie* qui ferait obstacle à l'exercice, par la Cour, de ses compétences.

6. En conclusion, Monsieur le président, Mesdames et Messieurs les Membres de la Cour, l'argument du non-épuisement des voies de recours internes ne constitue donc en rien un obstacle à l'indication par la Cour des mesures conservatoires sollicitées par Qatar. La question de la recevabilité n'est pas pertinente à ce stade de la procédure et la règle du non-épuisement des voies de recours internes ne trouve en tout état de cause pas à s'appliquer à une demande telle que celle introduite par Qatar sur la base de la convention. Enfin, à supposer même que ces obstacles puissent être dépassés, les éléments du dossier ne permettent aucunement de conclure à une quelconque irrecevabilité *prima facie* de la demande de Qatar. Je vous remercie pour votre attention et vous prie, Monsieur le président, de bien vouloir passer la parole à ma collègue Catherine Amirfar, pour qu'elle puisse traiter de la question de la plausibilité des droits dont la protection est sollicitée.

Le PRESIDENT : Je remercie M. le professeur Klein et je donne la parole à Mme Amirfar. You have the floor.

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[35] Demande en indication de mesures conservatoires, par. 9 ; Office of the United Nations High Commissioner for Human Rights' Technical Mission to the State of Qatar, 17-24 November 2017, «Report on the Impact of the Gulf Crisis on Human Rights», December 2017, annex 16 [Mission technique du Bureau du Haut-Commissaire des Nations Unies aux droits de l'homme à l'Etat du Qatar, 17-24 novembre 2017, «Rapport sur l'impact de la crise du Golfe sur les droits de l'homme», décembre 2017], par. 40 et 60 ; National Human Rights Committee, «6 Months of Violations, What Happens Now? The Fourth General Report on the Violations of Human Rights Arising from the Blockade of the State of Qatar», dated 5 December 2017, Annex 17 [Comité national des droits de l'homme, «Six mois de violations, que se passe-t-il à présent ? Quatrième rapport sur les violations des droits de l'homme résultant de l'embargo imposé au Qatar», 5 décembre 2017], p. 18 ; National Human Rights Committee, «Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar», dated June 2018, Annex 22 [Comité national des droits de l'homme, «Cinquième rapport général, poursuite des violations des droits de l'homme : un an d'embargo imposé au Qatar», juin 2018], p. 53.

[36] Documents soumis par les Emirats arabes unis, document n° 6 («Power of Attorney»).

Ms AMIRFAR:

III. THE PROVISIONAL MEASURES SOUGHT LINK TO PLAUSIBLE RIGHTS UNDER ARTICLES 2, 4, 5, 6, AND 7 OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

1. Mr. President, distinguished Members of the Court, it is a privilege to appear again before you. I will now address the various arguments advanced by the UAE related to the plausibility of the rights asserted by Qatar under the Convention. I will first address the UAE's legal argument that measures taken to curtail the rights of an entire people somehow do not fall within the broad definition of "racial discrimination" under Article 1 (1) of the Convention. I will address this argument as ~~***the***~~ ***a*** matter of the *plausibility* of the rights asserted by Qatar under the Convention, not of the Court's jurisdiction *ratione materiae*, which Mr. Donovan and Mr. Martin have addressed. I will then turn to the UAE's remaining arguments on the plausibility of the rights asserted by Qatar, as well as the link between the rights for which protection is sought and the provisional measures requested.

A. The definition of racial discrimination under Article 1 (1)

1. The definition of racial discrimination is a question of plausibility of the rights asserted under the Convention

2. We recall that the Court has found that rights asserted support the indication of provisional measures as long as they are plausible, in the specific sense of being "grounded in a *possible* interpretation" of the treaty invoked[37]. As this Court made clear in *Belgium* v. *Senegal*, "the Court does not need to establish definitively the existence of the rights claimed" or consider the Applicant's "capacity to assert such rights before the Court"[38].

2. Plausibility of the rights asserted by Qatar under Article 1 (1) of the Convention

3. The rights asserted by Qatar are unquestionably grounded in a "possible" interpretation of the Convention. To establish the plausibility of those rights, I will address: *first*, the plain text of

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[37] *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Provisional Measures, Order of 28 May 2009, I.C.J. Reports 2009*, p. 152, para. 60; emphasis added.

[38] *Ibid.*, (for purposes of provisional measures, "the Court does not need to establish definitively the existence of the rights claimed" or consider the applicant's "capacity to assert such rights before the Court").

the Convention, read in context and in light of its object and purpose[39]; *second*, the *travaux* of the Convention; and *finally*, the relevant interpretations of the CERD Committee.

4. *First*, while the Convention uses the term "racial discrimination" throughout, the definition of that term in Article 1 (1) includes several categories — "race, colour, descent, or national or ethnic origin" — covering a broad range of types of discrimination expressly reaching beyond just race and ethnicity, and encompassing both nationality-based and ancestry-based discrimination. Mr. Olleson's central argument is that "national origin" and "ethnic origin" must be one and the same, because "national origin" is "twinned" — as he puts it — "with the concept of 'ethnic origin'" in that listing[40]. But to the contrary, the fact that "national origin" is listed separately from "ethnic origin" by itself powerfully rebuts any such attempt at false equivalence. By this, Mr. Olleson attempts to limit dramatically the ambit of the Convention to allegations of "ethnic cleansing, or prejudicial differences of treatment of minority groups based on ethnicity"[41], in a manner meant to coincide with allegations made in previous cases before this Court arising under the Convention. However, there is *no* such limitation in the Convention itself.

5. Mr. Olleson also argues that the term "national origin" was intended to "carry a narrower meaning" than "nationality", because, as he said, "a further and crucial point to underline is that the Convention contains no express reference to nationality as a prohibited ground of discrimination"[42]. But again, that is not a restriction borne out by the Convention itself. The Court need read no further than Article 1 (3), not mentioned by Mr. Olleson, which states expressly that while the Convention does not affect legal provisions of States Parties concerning nationality, citizenship or naturalization, that limitation is subject to the condition "that such provisions do not discriminate against any particular *nationality*"[43]. That express reference to "nationality" in Article 1 (3) of the Convention wholly defeats the argument that "national origin" carries a "narrower" meaning than "nationality". As to Mr. Olleson's extended discussion of the mentions of "race" in the

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[39] Vienna Convention on the Law of Treaties, 1155 *UNTS* 331 (1969), Art. 31 (1).

[40] CR 2018/13, p. 40, para. 28 (Olleson).

[41] CR 2018/13, p. 39, para. 20 (Olleson).

[42] CR 2018/13, p. 40, paras. 29-30 (Olleson).

[43] CERD, Art. 1 (3).

Convention[44], that point, respectfully, leads nowhere, as the umbrella concept in Article 1 of the Convention is not "race", but "racial discrimination", as defined in Article 1 (1) to include "all its forms and manifestations". As a consequence, the plain reading of the text contemplates that "national origin" is something different from "ethnic origin", and that the inclusion of "national origin" in Article 1 (1) does not have a narrower meaning than "nationality"[45].

6. This reading is in line with both the clear object and purpose of the Convention to eliminate racial discrimination "in all its forms"[46], as well as expansive interpretive principles of human rights instruments[47]. In fact, targeting a particular group of non-citizens for discriminatory treatment based on their nationality would run counter to the underlying principles of the United Nations Charter and the Universal Declaration of Human Rights. These two instruments were incorporated into the Preamble of the Convention and cited heavily by the drafters, as were their values — "that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or *national origin*"[48].

7. *Second*, though this Court need not rely on supplemental means of interpretation, this interpretation is confirmed by the *travaux* of the Convention. Now according to Mr. Olleson, the fact that the delegates debated the terms "nationality" and "national origin", and the fact that some proposed amendments carved out "nationality"-based distinctions from the Convention, *definitively* proves that "national origin" is "narrower" than "nationality", *and* that the drafters intended to exclude nationality-based discrimination from the scope of the Convention.

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[44] CERD, 2018/13, pp. 38-48, para. 17-60 (Olleson).

[45] See, e.g., Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination, A Commentary*¸ Oxford University Press, 2016, p. 494 ~~***("[The Convention] is significantly and even predominantly concerned with what may be termed 'cultural' or 'difference' racism: 'racial discrimination' subsumes and transcends discrimination based on race.").***~~

[46] CERD, Preamble, Art. 2 (1).

[47] *Mayagna (Sumo) Awas Tingni Community* v. *Nicaragua*, Merits, reparations and costs, IACHR Series C No. 79, [2001] IACHR 9, IHRL 1462 (IACHR 2001), 31 Aug. 2001, Inter-American Court of Human Rights; see also *Loizidou* v. *Turkey*, 40/1993/435/514, Council of Europe: European Court of Human Rights, 23 Feb. 1995; Thornberry, p. 158; Committee on the Elimination of Racial Discrimination, *General Recommendation XXXII on The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination*, UN doc. CERD/C/GC/32, para. 5.

[48] CERD, Preamble (referencing the *Universal Declaration of Human Rights*, UN General Assembly, Universal Declaration of Human Rights, 10 Dec. 1948, 217 A (III), and the *UN Charter*, United Nations, Charter of the United Nations, 24 Oct. 1945, 1 *UNTS* XVI).

8. I respectfully suggest that the *travaux* support the opposite conclusions. The *travaux* make clear that the overarching, overwhelming concern of the drafters in whether to include the term "nationality" in Article 1 (1) — and indeed, some of the debate about the term "national origin" itself[49] — was to ensure that the denial of certain *political* rights or other benefits of citizenship to non-citizens would not constitute a violation of the Convention. It was *not* to impose a "narrow" or restrictive definition of "national origin". This is clear from the Third Committee debate. Indeed, it is clear from even the limited portions of the *travaux* excerpted yesterday, including the amendment sponsored by France and the United States — the purpose of which was, according to the US delegate, "to ensure that the Convention applied to racial discrimination in all its forms, while allowing certain accepted distinctions between citizens and non-citizens"[50].

9. That point is also clear from the "compromise" amendment, which was actually adopted as Article 1 of the Convention. This amendment — adopted unanimously — definitively *rejected* the approach of carving out nationality-based discrimination from Article 1 (1). Instead, the amendment addressed the concern I just mentioned by introducing what would become Article 1 (2), which provides that distinctions between citizens and non-citizens do not automatically violate the Convention. Crucially, however, Article 1 (2) is still subject to Article 1 (1), and therefore does not permit distinctions between citizens and non-citizens that target certain groups of non-citizens for discrimination on a prohibited basis, including on the basis of national origin, as I will discuss in more detail momentarily. And again, the reference to "nationality" in Article 1 (3) — also introduced as part of the "compromise" amendment, and so conspicuously absent from yesterday's presentation — makes this clear.

10. In introducing this amendment, the Lebanese delegate drew explicit reference to the presence of "national origin" in the Universal Declaration of Human Rights to support its

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[49] United Nations, Official Records of the General Assembly (UNGAOR), Twentieth Session, Third Committee, UN doc. A/C.3/SR.1304, p. 84, para. 16:

> ~~*"Mr. GUEYE (Senegal) noted that the expression 'national origin' had given rise to controversy, apparently because some delegations feared that its use would confer on aliens living in a State equality of rights in areas, political or other, which under the laws of the State were reserved exclusively to nationals. His delegation believed that the expression should nevertheless be retained, since it would offer protection to . . . foreign minorities within a State which might also be subjected to persecution."*~~

[50] *UNGAOR*, Twentieth Session, Third Committee, UN doc. A/C.3/SR.1304, p. 85, para. 24.

inclusion[51]. Other delegates supported its retention in the text for the same reason[52]. This is consistent with the overall approach of the delegates to the terms in Article 1 (1). The primary goal of the delegates was *not* to sharply distinguish between each of the delineated grounds of racial discrimination, but rather, to protect the universality of concern reflected in the Convention[53].

11. *Third*, Qatar's claims are grounded in an interpretation of the Convention set forth by the CERD Committee. It bears mentioning at the outset that the general recommendations of the Committee are entitled to great weight, as the only body mandated to supervise the implementation of the Convention on an ongoing basis[54]. To use the words of Professor Pellet, the Committee stands as the "guardian" of the Convention[55].

12. Helpfully, Mr. Olleson also embraces the reasoning of the CERD Committee in its General Recommendation XXX[56], although we disagree on what it says. In this Recommendation —which bears careful review by the Court and can be found in tab 4 of your First Round folders —the Committee squarely rejects the argument propounded by Mr. Olleson yesterday, that nationality-based discrimination falls outside the ambit of the Convention[57]. The Committee's bases for doing draw deeply from the object and purpose of the Convention and the resulting view that Article 1 (2) must be "construed narrowly"[58], "so as to avoid undermining the basic prohibition against discrimination," and therefore Article 1 (2) "should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and

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[51] *UNGAOR*, Twentieth Session, Third Committee, UN doc. A/C.3/SR.1307, p. 95, para. 1.

[52] *UNGAOR*, Twentieth Session, Third Committee, UN doc. A/C.3/SR.1305, p. 89, para. 44.

[53] *UNGAOR*, Twentieth Session, Third Committee, UN doc. A/C.3/SR.1304, p. 83-84, para. 5 ~~***(opposition of Polish delegate to deleting the word "national" from Art. 1 on the grounds that it "would imply that the Committee rejected the principle that all persons should be protected from any type of racial discrimination"); see also Thornberry, p. 119 (noting the overlap among terms in Art. 1 (1), which reinforces the "assertion that 'the definition was composed by adding as many concepts as possible, in order to avoid any lacunae'",)***~~.

[54] ~~***The Convention itself establishes the Committee and authorizes it "to make suggestions and general recommendations" and consider States' periodic reports under Art. 9, as well as assess individual complaints submitted pursuant to Art. 14. Pursuant to Art. 8, Committee members serve in their personal capacity and must be "experts of high moral standing and acknowledged impartiality".***~~ ***See CERD Arts. 8, 9, 14.***

[55] CR 2018/13, p. 21, para. 8 (6) and p. 26, para. 20 (Pellet).

[56] CR 2018/13, p. 41, paras. 32 *et seq.* (Olleson).

[57] CR 2018/13, p. 48, para. 60 (Olleson).

[58] Patrick Thornberry, p. 146.

Cultural Rights and the International Covenant on Civil and Political Rights"[59]. Clearly, most of these fundamental human rights, which are protected against discriminatory interference by Article 5 of the Convention, apply to all individuals within a State, whether they are citizens or non-citizens. Indeed, Article 5 specifies as much, requiring States parties "to guarantee the right of *everyone*, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of" certain fundamental rights[60]. As the CERD Committee has observed: while

> "some of these [Article 5] rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens, human rights are, in principle, to be enjoyed by all persons. States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognized under international law"[61].

So even as some Article 5 "political" rights may be conferred only on citizens without running afoul of the Convention's protections, that does not hold true, contrary to what Mr. Olleson suggests, for the other rights, specifically the rights invoked by Qatar in these proceedings, which must be guaranteed equally to both citizens and non-citizens and, in particular, cannot discriminate against Qatari nationals.

13. Indeed, the precise argument made by the UAE yesterday has been rejected by the CERD Committee. In the case of *D.R.* v. *Australia*, the complainant, a citizen of New Zealand who lived in Australia, alleged discrimination on the basis of "national origin". Australia argued that the complaint was inadmissible because the complainant was alleging *nationality*-based, rather than "national origin"-based discrimination. Australia maintained that that form of discrimination is not prohibited by the Convention, particularly in light of the distinction between citizens and non-citizens permitted by Article 1 (2). The CERD Committee squarely rejected Australia's interpretation, stating that

> "[t]aking into account General Recommendation No. 30 of 2004 and in particular the necessity to interpret article 1, paragraph 2, of the Convention in the light of Article 5,

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[59] Committee on the Elimination of Racial Discrimination (CERD), General Recommendation XXX on Discrimination Against Non-Citizens, UN doc. CERD/C/64/Misc.11/rev/3 (2004), para. 2.

[60] CERD, Art. 5; emphasis added.

[61] CERD General Recommendation XXX, UN doc. CERD/C/64/Misc.11/rev/3 (2004), para. 3.

> the Committee does not consider that the communication as such is *prima facie* incompatible with the provisions of the Convention"[62].

While ultimately not granting the relief requested for other reasons, the Committee's reasoning on this point is significant.

14. Outside these proceedings, the UAE itself seemed to agree, reporting to the CERD Committee that the UAE affirmed that its Constitution and laws embody the principle of equal public rights and the prohibition of all forms of racial discrimination — and I quote their words: "[i]n keeping with article 1 [of the Convention], which defines racial discrimination and with the provisions of that [sic] *guarantee everyone, whether nationals or residents, protection against any form of discrimination*"[63].

15. In short, the Convention cannot be read to exclude discriminatory conduct based on Qatari national origin or nationality, and Qatar's claims that the UAE is singling out Qataris and only Qataris *en masse* for discriminatory treatment raise plausible rights supporting an indication of provisional measures.

B. Qatar has established the plausibility of the rights asserted under Article 5 of the Convention and the link to the provisional measures requested

16. Now turning to the UAE's remaining arguments, Mr. Olleson attempts artificially to narrow several of the other rights Qatar asserts.

17. *First*, Mr. Olleson takes issue with Qatar's view of the right to protection from discriminatory interference with freedom of expression and opinion, on the puzzling basis that the measures to which Qatar objects affect all individuals generally, not just one group discriminatorily[64]. But it does not matter for the purposes of the Convention that individuals other

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[62] *D.R.* v. *Australia*, Comm. No. 42/2008, UN doc. CERD/C/75/D/42/2008 (2009), para. 6.3.

[63] United Arab Emirates, Seventeenth Periodic Report of States Parties Due in 2007, CERD/C/ARE/12-17 (27 March 2009), para. 69; see also United Arab Emirates, Eighteenth to Twenty-First Periodic Reports of States Parties due in 2015, UN doc. CERD/C/ARE/18-21 (17 May 2016), para. 21 ~~***("the guarantees enshrined in the Constitution of the United Arab Emirates . . . include the equality of citizens and non-citizens in the enjoyment of fundamental rights to the extent recognized under international law".)***~~; United Arab Emirates, Seventeenth Periodic Report of States Parties due in 2007, CERD/C/ARE/12-17 (27 March 2009), para. 76 ~~***("The people and residents of the [UAE], as well as visitors, live together in complete harmony, and the law guarantees residents the right to use health, educational and leisure facilities on an equal basis with citizens and without any discrimination.")***~~.

[64] CR 2018/13, p. 49, para. 65 (Olleson). ~~***We note that Mr. Olleson also characterized Qatar's assertion of the Article 5 (d) (viii) right to protection from discriminatory interference with freedom of expression or opinion as a question of jurisdiction ratione materiae rather than plausibility. We disagree with this framing, for the reasons discussed by Mr. Martin. Qatar need only show that the UAE's actions plausibly constitute discriminatory interference with freedom of expression, and it has indubitably done so.***~~

than Qataris are negatively affected, when those measures are not neutral either "in purpose" or "effect", and instead "target and stigmatize" Qataris on the basis of their national origin[65]. Independent observers, such as Reporters Without Borders and Amnesty International have decried these measures as clear violations of these rights[66]. Also, because the Convention prohibits racial discrimination against "persons, groups of persons or institutions", it is not restricted to individuals and protects Qatari entities, like Qatari media outlets[67].

The PRESIDENT: Ms Amirfar, may I please ask you to slow down for the interpreters.

Ms AMIRFAR: Of course.

18. *Second*, Mr. Olleson contends that the "right to marriage and choice of spouse" contained in Article 5 *(d)* (iv) of the Convention cannot support the right to *family* life, nor the provisional measures associated with reunification of the families separated by the expulsion order. But Qatar has made clear that it is relying not only on Article 5 *(d)* (iv), but the right to family life and the rights of the child under the Universal Declaration of Human Rights (UDHR) and other human rights instruments[68]. The CERD Committee expressly has confirmed, that the "rights and freedoms mentioned in article 5 do not constitute an exhaustive list," but more broadly, as recalled in the Preamble to the Convention, draw from the UDHR and the Charter of the United Nations[69]. On that basis, the CERD Committee in fact has referred to the right to family life and questions related to the reunification of family under the Convention[70].

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[65] Committee on the Elimination of Racial Discrimination, General Recommendation XXX on Discrimination Against Non-Citizens, UN doc. CERD/C/64/Misc.11/rev/3 (2004), para. 12.

[66] Reporters Without Borders, *Unacceptable Call for Al Jazeera's Closure in Gulf Crisis* (28 June 2017), https://rsf.org/en/news/unacceptable-call-al-jazeeras-closure-gulf-crisis; Amnesty International, *Families ripped apart, freedom of expression under attack amid political dispute in Gulf* (9 June 2017), https://www.amnesty.org/en/latest/news/2017/06/families-ripped-apart-freedom-of-expression-under-attack-amid-political-dispute-in-gulf/.

[67] CERD, Art. 2 (1).

[68] CR 2018/12, p. 40, para. 29 (Amirfar).

[69] CR 2018/12, p. 40, para. 27 (Amirfar); CERD General Recommendation XX on Article 5 of the Convention, UN doc. HRI\GEN\1\Rev.6 at 208 (2003), para. 1.

[70] Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination, A Commentary*, Oxford University Press, 2016, pp. 345-46. ~~*: "Although 'family' is not referred to as such in the convention, the Committee has referred compendiously to the 'right to family life, marriage and choice of spouse' and has expressed concern regarding impediments to family reunification on numerous occasions, including in decisions."*~~

19. *Third*, the UAE contends that Qatar's view of the rights to public health and medical care under Article 5 *(e)* (iv), the right to education and training under Article 5 *(e)* (v), and rights to work and to own property under Article 5 *(e)* (i) and *(d)* (v), reduce to the general "right of entry to a State"[71]. Qatar does not contend that the UAE has no right to regulate its borders. Qatar does contend, however, that the expulsion of Qataris and ban on re-entry of those Qataris on the discriminatory basis set forth in the 5 June 2017 directive has had the *effect* of infringing on the fundamental human rights contained in Article 5 and incorporated human rights instruments. As noted, the prohibition on racial discrimination contained in Article 1 (1) applies to measures that have "the purpose or *effect*" of impairing the recognition of human rights, and under Article 2 (1) *(c)*, States must rescind or nullify any laws or regulations that "have the *effect* of creating or perpetuating racial discrimination wherever it exists". The UAE's discriminatory actions on 5 June 2017 had the prohibited purpose of implementing a collective expulsion and corresponding ban on re-entry of Qataris, and they had the prohibited effect of infringing Article 5 rights of Qataris to medical care, education, and property rights that were cut off as a result.

20. *Fourth*, with respect to the link between the rights asserted and the provisional measures requested, I will be brief. On Wednesday, Professor Klein explained the straightforward links established between the measures *requested* and the obligations cited by Qatar under Articles 2, 4, 5, 6, and 7 of the Convention[72]. Yet Mr. Olleson somehow concludes that because "Article 5 . . . cannot be read as entailing a right of entry . . . all the individual measures sought in this regard, and *a fortiori*, the general measure, are insufficiently linked to the rights relied upon by Qatar"[73]. But contrary to Mr. Olleson's argument, Qatar does not seek to "require the UAE to permit entry of *all* Qatari nationals, whether or not they had previously been resident or otherwise present in the UAE"[74]. Rather, it seeks to protect its rights under the Convention by requiring the UAE to take steps to suspend its ongoing violations and prevent further harm to those rights, including harm arising from its order of collective expulsion, which by their nature require the UAE to address

[71] CR 2018/13, p. 53, paras. 86-91 (Olleson).

[72] CR 2018/12, pp. 49-50, paras. 11-12 (Klein).

[73] CR 2018/13, p. 55, para. 100 (Olleson).

[74] CR 2018/13, p. 55, para. 101 (Olleson).

individuals seeking re-entry following that expulsion. Further, this argument does not bear at all on the question of whether the measures requested — the measures *actually* requested — are linked to the rights sought to be preserved, which is clearly the case.

21. Mr. President, honourable Members of the Court, strangely, we heard repeatedly yesterday that no Qatari nationals were expelled from the UAE and that the Qataris that left after the directive of 5 June 2017, did so voluntarily, "without compulsion"[75]. Lord Goldsmith will deal with the substance of Qatar's response shortly, as well as the underlying facts of violations. But even setting aside for a moment the remarkable assertion that the UAE would announce an earth-shattering, draconian "policy" of collective expulsion — inspiring broad condemnation from international human rights organizations — that it had no intention of enforcing, the simple fact is that the Government's "policy" — even if it chooses to take the position before this Court that it never enforced it — still stands, to this day. There has never been an announcement or directive rescinding the 5 June 2017 expulsion and ban on re-entry of Qataris.

22. In short, the UAE's argument suffers from a central fallacy. Even if the UAE is making certain targeted exceptions to these measures of blanket *discrimination*, differential treatment based on citizenship or immigration status must have a "legitimate aim" and be "proportional to the achievement of this aim"[76]. The Convention prohibits collective expulsion for this very reason. As a matter of law, a collective expulsion cannot be a proportional response in pursuit of any legitimate aim, "in particular", as the CERD Committee has stated in its General Recommendation XXX, due to the failure to take "the personal circumstances of *each of the persons concerned*" sufficiently into account. In other words, the starting premise cannot be to revoke the rights of an entire group, and then decide who gets their rights back on a case-by-case basis, much less on the arbitrary, opaque procedures devoid of any due process as *described* in the UAE documents. To so find would be to turn the Convention framework on its head: the Convention establishes a régime of human rights protections with very carefully prescribed limits, not a system of permitted discrimination with limited protections.

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[75] CR 2018/13, p. 12, para. 11 (Alnowais).

[76] CERD General Recommendation XXX, UN doc. CERD/C/64/Misc.11/rev/3 (2004), para. 4.

23. So even had the UAE declined to implement the 5 June 2017 policy, and nothing in the record actually says that it did so decline, the affront to the Convention would stand because the UAE has kept in place a discriminatory policy. But in fact, there is more at play: as Lord Goldsmith will shortly address, there exists independent evidence that makes clear that the notion of free transit and movement is just a smokescreen placed before this Court to avoid the indication of provisional measures.

24. With that, Mr. President and honourable Members of the Court, I thank you for your kind attention and ask that you invite Lord Goldsmith to the podium.

The PRESIDENT: I thank Ms Amirfar and I shall now invite Lord Goldsmith to take the floor. You have the floor.

Mr. GOLDSMITH:

IV. THE PROVISIONAL MEASURES REQUESTED ARE URGENT: THERE IS A REAL AND IMMINENT RISK OF IRREPARABLE PREJUDICE TO THE RIGHTS IN DISPUTE

A. Introductory remarks

1. Thank you, Mr. President, Members of the Court. I will again focus on the question of urgency.

B. Legal framework

2. Yesterday, Professor Shaw started his discussion of the legal framework by quoting the same standard on urgency that I set out on Wednesday: that the Court will exercise the power to award provisional measures where there is "urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights in dispute before the Court gives its final decision . . ."[77].

3. Professor Shaw starts with the right standard, but then adds conditions and glosses that are unjustified. Indeed, at one point he appeared to suggest that the Court may only order provisional

[77] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1168, para. 82; see also *Application of the International Convention for the Suppression of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 136, paras. 88-89; *Jadhav Case (India* v. *Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, p. 243, para. 50; CR 2018/13, p. 57, para. 5 (Shaw).

measures in cases such as genocide, military action and execution. But, the Court's entire body of provisional measures orders makes clear that this is incorrect, and nothing so dramatic is needed. In the last few years, the Court has granted provisional measures to protect the confidentiality of communications between counsel and client[78], to protect the inviolability of diplomatic premises[79], to protect political and cultural rights under the Convention[80]. I could go on.

4. There are three key points on which we differ from Professor Shaw: (i) the definition of irreparable harm; (ii) what constitutes a real and imminent risk in this context; and (iii) the general approach to interpreting the Court's power under Article 41.

1. Irreparable harm

5. *First*, in its explanation of what constitutes irreparable harm, the UAE omitted to mention the Court's description of "irreparable harm" in recent cases, such as *Equatorial Guinea* v. *France*, in which the Court considered harm to be irreparable where the violation "may not be capable of remedy, since it might not be possible to restore the *status quo ante*"[81]. This description was framed in similar terms in *Timor-Leste* v. *Australia*[82]. Just dwell on that for a moment: "*may not* be possible to restore the *status quo ante*".

6. By contrast, I have to say that we do not recognize Professor Shaw's definition of irreparable — "clearly and definitively could not be relieved, remedied or resolved now or in the future"[83] — as based on any jurisprudence.

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[78] *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste* v. *Australia), Provisional Measures, Order of 3 March 2014, I.C.J. Reports 2014*, p. 160, para. 55.

[79] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1171, para. 99.

[80] *Application of the International Convention for the Suppression of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 140, para. 106.

[81] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1169, para. 90.

[82] *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste* v. *Australia), Provisional Measures, Order of 3 March 2014, I.C.J. Reports 2014*, p. 157, para. 42. ~~***:"Any breach of confidentiality may not be capable of remedy or reparation as it might not be possible to revert to the status quo ante following disclosure of the confidential information."***~~

[83] CR 2018/13, p. 58, para. 6 (Shaw).

7. Indeed, the test stated in this Court's opinion is neither a "stringent test" nor a "high bar", as Professor Shaw urges[84]. Nor is it "the absence of viable alternative means of addressing that prejudice" nor "the impossibility of addressing the issue at the merits stage"[85].

8. The United Arab Emirates accepts that there are certain violations, in respect of which "by their very nature, the conditions of the grant of provisional measures are deemed to have been fulfilled"[86].

9. Where the existence and raison d'être of rights stem from the equality and dignity of human beings, the harm that results from their violation is apparent. Deprivation of family life, of education, of medical care, of property, of the right to work, all these, if deprived on a discriminatory basis, all strike at the very heart of equality and dignity. I doubt the United Arab Emirates is suggesting that damage to human dignity is susceptible to restitution, or reparable by compensation[87]. To the contrary, irreparable harm is the natural consequence of the violation of such rights.

10. That, we suggest, is why this Court has found that irreparable harm is a serious possibility in cases where rights violations result in, amongst other things, privation, hardship and anguish[88]. The evidence before this Court in this case shows irreparable prejudice in various forms: the hardship and anguish of separation from loved ones, loss of homes, opportunities, businesses in which individuals have invested time and effort, futures turned on their heads, and enduring uncertainty. No final award that the Court can make will reverse this privation, hardship, anguish, loss of time and loss of hope.

2. Risk of irreparable prejudice

11. *Second*, I turn to look at the "real and imminent risk of" irreparable harm. With respect, the UAE is wrong in saying that the test is that the "risk of irreparable prejudice is not merely high

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[84] *Ibid.*, p. 58, 60, paras. 6, 12 (Shaw).

[85] *Ibid.*, p. 60, para. 12 (Shaw).

[86] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 353, para. 142.

[87] CR 2018/13 p. 59, para. 9 (Shaw).

[88] CR 2018/12, p. 60, para. 36 (Goldsmith).

but overwhelming and about to happen"[89]. That is not the meaning of "real and imminent", either in its ordinary meaning or in this Court's jurisprudence. A better way, we suggest, to think about "real" is as "not imagined or supposed" or "not inconceivable". Indeed, in the words of this Court in its provisional measures Order in its recent case between *Equatorial Guinea* v. *France*, the Court said:

> "Given that it is *possible* — as France has moreover indicated — that, during the hearing on the merits, the *Tribunal correctionnel* [de Paris] may, of its own initiative or at the request of a party, request further investigation or an expert opinion, it is *not inconceivable* that the building on Avenue Foch will be searched again.
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> . . . . . .
>
> It follows from the foregoing that there is a real risk of irreparable prejudice to the right to inviolability of the premises that Equatorial Guinea presents as being used as the premises of its diplomatic mission in France."[90]

12. I also discussed the condition of imminence on Wednesday: temporally, the Court is assessing whether there is a risk of irreparable prejudice occurring between now and a decision on the merits. That is the question to be asked by this Court.

3. General approach

13. *Finally* on this topic, I want to touch quickly on the general approach to interpreting the power granted under Article 41. Professor Shaw urged a "restrictive interpretation" in considering the grant of provisional measures[91]. But, with respect, this Court's jurisprudence is not about whether a restrictive or expansive interpretation should be adopted: the approach to be adopted is one that preserves the rights in dispute, and, more generally, this Court's judicial function. A restrictive interpretation would undermine the purpose of provisional measures. The Court should ask here, we respectfully suggest, as it has done in granting provisional measures in other cases: is it conceivable that irreparable prejudice could occur to the rights in dispute before the merits decision? The answer in this case is plainly — yes.

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[89] CR 2018/13, p. 61, para. 15 (Shaw).

[90] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, pp. 1169-1170, paras. 89-90; (emphasis added).

[91] CR 2018/13, p. 62, para. 19 (Shaw).

14. I want now to turn to the evidence which demonstrates this real and imminent risk of harm, as properly defined.

C. Collective expulsion

15. I want to start, Mr. President and Members of the Court, by referring to a document which the Court will find at tab 1 of its folder, and that is the order, the declaration, of 5 June which started these events.

16. In the light of the surprising submission made by the UAE — to the effect that there is no problem, there has been no expulsion, no harm, and indeed no acts against the people of Qatar at all — I want to make three points.

17. First, the document at tab 1 is a definitive, formal and official statement on behalf of the United Arab Emirates — see, please, the opening words. It was issued by the UAE's Ministry of Foreign Affairs. And it is an unconditional statement of formal decisions that have been made by the UAE.

18. The UAE, I quote, "decided to take the following measures", and if we look at the second paragraph, we see that they include "giving Qatari residents and visitors in the UAE 1 days to leave the country for precautionary security reasons"[92]. Well, Members of the Court, Mr. President, what are Qataris to make of that language? That this is just a casual statement with no intention to apply it or follow through? Can they assume that it can safely be ignored? Even though it includes these chilling words — and again I quote: "leave the country for precautionary security reasons"? Should Qataris have considered this to be a casual statement even though it actually says it is describing, "decisive measures"?[93]

19. The statement surely is plain: "Leave and leave now — you have a maximum of 14 days". And that is precisely what happened. Qataris left the UAE because they had been told to. That is as much an order of expulsion as if they had been bussed to the border.

20. And, Mr. President, there is other evidence, which comes from the UAE itself, that the 5 June statement was enough to drive Qataris out of the country: the UAE felt compelled to erect a

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[92] UAE Ex. 2, pp. 2-3.

[93] UAE Ex. 2, p. 3.

hotline. Note that they did not just sever diplomatic relations as the UAE now contends — you would not have, as you have been told, 33,000 calls to a humanitarian hotline asking for the restoration of diplomatic relations[94].

21. Professor Shaw asserted yesterday that this hotline was "established to receive such cases and take appropriate action", and on that basis he argued that there is no ongoing or imminent harm[95]. Well, that, with respect, is false. The reality is more troubling for Qataris.

22. The evidence in fact adduced by the UAE — and I invite the Court in due course to examine the document — states clearly that, in fact, this "hotline" is a "police security channel" provided by the Abu Dhabi Police that existed prior to 11 June 2017. Its "service objectives", which the Court can see in the document, include "[c]ombating and preventing crimes" and "[c]onsolidating the concept of 'Security Is Everybody's Responsibility'"[96]. "Attention" is paid to "issues that are disturbing and recurrent in the society and have a high impact on security"[97]. One sees nothing about humanitarian considerations.

23. Indeed, the service provided by the Abu Dhabi police gathers information, it says, helpful "in knowing the behaviors and conducts that indicate the commission of the crime"[98]. So, Mr. President, in other words, against the backdrop of a categorical expulsion and exclusion order targeting Qataris, Qataris are expected to seek redress from a police security reporting line.

24. The UAE's evidence also reinforces that this line is ineffective for injured Qataris. For example, the UAE claims that the total number of incoming calls to the hotline from 11 June 2017 to 10 June 2018 reached 33,383, but that it received only 1,390 requests in 2018[99]. Besides lacking any context, these figures also demonstrate the UAE's failure to mitigate. If 33,383 calls yield only 1,390 requests, as independent reports have found, calls go unanswered, and the security channel is ineffective.

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[94] UAE Ex. 3, p. 13.

[95] CR 2018/13, p. 13, paras. 41 and 44 (Shaw).

[96] UAE Ex. 3, p. 8.

[97] UAE Ex. 3, p. 8.

[98] UAE Ex. 3, p. 8.

[99] UAE Ex. 3, p. 13.

25. Each of the examples of the hotline produced by the UAE demonstrates the continuing harm. Approvals are temporary. Every proposed trip to the UAE by a Qatari requires a separate approval, no matter the circumstance. For example, the UAE provides the example of Maryum, a Qatari national apparently residing in the UAE with her Emirati husband, who must travel to Beirut "for treatment and then return to her husband"[100]. Maryum's example demonstrates how many Qataris still resident in the UAE live in perpetual fear — they live in the shadow of the UAE's expulsion order. Each time Maryum needs to travel to Beirut for her treatment, she risks being unable to return.

26. And that, Mr. President, is also relevant to my second point: that there was, in the words of Amnesty International, "a climate of fear" engendered amongst Qatari nationals who formerly resided in or visited the UAE, and resulting from the statements of authorities that people would be "punished for expressing sympathy towards Qatar or criticizing government actions"[101]. Surely this climate of fear would have prevented many Qataris from attempting to make use of the UAE's so-called "humanitarian" hotlines. So last June, Amnesty International reported that "[s]ome affected families have told Amnesty International that they are too scared to call hotlines and register their presence, or their family's presence, in a 'rival' country for fear of reprisal"[102]. And more recently, the Office of the United Nations Human Rights Commissioner reported that "[a]ll interlocutors met by the team evoked the lack of trust or even fear this situation has generated"[103].

27. Mr. President, Members of the Court, this is not the only example of the UAE's extraordinary attempt to distance itself from its own actions. Professor Shaw described yesterday the statement of the UAE's Attorney General[104], and you have it at tab 2 of today's folder. That

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[100] UAE Ex. 3, p. 75.

[101] Amnesty International, *Gulf/Qatar dispute: Human dignity trampled and families facing uncertainty as sinister deadline passes* (19 June 2017), p. 1; AQ, Ann. 6.

[102] Amnesty International, *Gulf/Qatar dispute: Human dignity trampled and families facing uncertainty as sinister deadline passes* (19 June 2017), p. 1; AQ, Ann. 6.

[103] Office of the United Nations High Commissioner for Human Rights' Technical Mission to the State of Qatar, 17-24 Nov. 2017, *Report on the Impact of the Gulf Crisis on Human Rights* (Dec. 2017), para. 59; AQ, Ann. 16; judges' folder, tab 9.

[104] CR 2018/13, p. 65, para. 35 (Shaw).

statement, as the Court will recall, announced penalties for "expressing sympathy, bias, or affection" for Qatar[105].

28. Well, Professor Shaw said that statement is "not a law"[106]. It was just a statement of the Attorney General. That seems to be the way that the UAE seeks to dismiss the facts against it — by saying that, although a UAE official has issued "decisive measures", in their words, it is "not a law". This is despite the fact that, as you can see, the statement contains a chilling list of penalties, including up to 15 years in prison, and a substantial fine, as well as a stirring injunction that acts of sympathy for Qatar will "weaken the social fabric of the State and the unity of its people"[107]. It also ends with a solemn warning that the Federal Public Prosecution "will enforce the law against the perpetrators of such crimes"[108].

29. Yet, these statements, which the UAE has characterized as "not law" and not enforced, prevent Qataris from making attempts to circumvent the UAE's expulsion order. Take, for example, a case reported by Human Rights Watch last July, following interviews that they conducted in Qatar. They spoke with a Qatari woman who had been in her third year at a UAE university when the discriminatory measures began. She showed representatives an e-mail that that she had received from her university on 7 June, informing her that the university had withdrawn her from fall and summer courses[109]. All Qatari students interviewed told Human Rights Watch that "the travel restrictions forced them to return to Qatar"[110].

30. And the NHRC reported this very month that most of the cases of victims affected by the UAE's expulsion order, "especially the mixed families, remain unresolved"[111]. These are but a few reasons that the UAE's claim that there has been no effect from its collective expulsion is baseless.

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[105] Attorney General Warns against Sympathy for Qatar or Objecting to the State's Positions, *Al Bayan Online*, 7 June 2017; AQ, Ann. 3; judges' folder, tab 2.

[106] CR 2018/13, p. 65, para. 35 (Shaw).

[107] Attorney General Warns against Sympathy for Qatar or Objecting to the State's Positions, *Al Bayan Online*, 7 June 2017; AQ, Ann. 3; judges' folder, tab 2.

[108] Attorney General Warns against Sympathy for Qatar or Objecting to the State's Positions, *Al Bayan Online*, 7 June 2017; AQ, Ann. 3; judges' folder, tab 2.

[109] Human Rights Watch, Qatar: Isolation Causing Rights Abuses (12 July 2017), p. 3: AQ, Ann. 10.

[110] Human rights watch, Qatar: Isolation Causing Rights Abuses (12 July 2017), p. 5: AQ, Ann. 10.

[111] NHRC, Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar (June 2018), p. 17; AQ, Ann. 22.

31. And that brings me to my third point. If in fact there is no problem, if in fact no Qatari resident of the UAE has been driven away, and no Qatari student has been denied their education, and no Qatari business owner denied access to his business or property — if that is in fact the case, then I have two questions.

32. My first question is: why have we seen no official statement revoking the measures against Qataris, withdrawing these dire warnings? The "decisive measures" which the UAE has dismissed as mere casual statements remain in place. So long as that is the case, Qataris will take them at their word, and will understand them to be, in their words, "strict and firm measures"[112].

33. And secondly, can there, if this is the case, be any objection to this Court granting the provisional measures that Qatar has requested, which would require the UAE to take steps to end discrimination against Qataris? There can be no objection, because the UAE says that they are not discriminating against Qataris, so there is no legitimate reason that there should not be an order. The UAE's imposition of discriminatory measures must be suspended.

D. Continuing violations proven

34. I want to add this. If we cannot believe UAE's own statements as to its intentions then this Court should have difficulty accepting its self-serving statements, its statistics, by which it seeks to persuade the Court as to what has actually taken place. Though, of course today, this hearing is not a fact-finding part of the case. Let me turn, then, to talk about the continuing violations that we have proven. Because despite the plain words of the 5 June 2017 directive and other statements by the UAE government, UAE now argues to you that they were never implemented or that it effectively implemented mitigation measures so that no rights were ever violated. But we suggest that the record before the Court, even at this stage, demonstrates otherwise.

35. We recognize, of course — though it does not seem that UAE does — that this Court is not engage in detailed fact-finding at this stage. And this Court has therefore relied in other cases, in indicating provisional measures on the reports of independent third parties. I mentioned this on Wednesday.

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[112] Attorney General Warns Against Sympathy for Qatar or Objecting to the State's Positions, *Al Bayan Online* (7 June 2017); AQ, Ann. 3.

36. So I want to refer now to a timeline of reports — which I hope will be coming up on the screen, I will not go through it: a dozen separate reports of independent organizations, including the United Nations' own Office of the High Commissioner for Human Rights, have identified human rights violations throughout the year, throughout the year since the UAE imposed the discriminatory measures. They found these violations in June 2017, immediately after the measures were imposed and within what Mr. Shaw bafflingly called the "purported" deadline to leave the country, and at regular intervals right up to and including this month[113]. And these reports show both that the directives of the UAE Government had an immediate impact and that, to the extent the UAE may have implemented some mitigation measures, they have been ineffective and incomplete. And they are all summarized in a chart at tab 8 of your folder, to which I respectfully refer you.

37. And I am going to put on the screen certain slides, and the Court has them also in its folder, without reading them, but just to pick up what has been said in some of those reports. On 9 June 2017, Amnesty International said this, talking about "[t]hese drastic measures . . . already having a brutal effect"[***114***].

38. On 13 June 2017, Qatar's National Human Rights Committee reported "violation of the most basic human rights" after documenting complaints from more than 500 individuals[115]. And the NHRC added it used initials rather than full names to preserve their safety and security.

39. I just want to add a word about the NHRC, the National Human Rights Committee, whose reports the UAE has sought to discredit as lacking independence. The NHRC is a distinguished Grade A human rights committee — a certification only given to national human rights committees that demonstrate, among other things, their autonomy from government, pluralism, competence, and independence to a panel of third-party reviewers on which the Office of the Commissioner for Human Rights is a permanent observer[116]. So as a result, this Court can rely upon its findings.

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[113] CR 2018/13, p. 62, para. 21 (Shaw).

[***114***] ***Amnesty International, Families ripped apart, freedom of expression under attack amid political dispute in Gulf (9 June 2017).***

[115] NHRC, First Report Regarding the Human Rights Violations as a Result of the Blockade on the State of Qatar (13 June 2017), p. 4; AQ, Ann. 5.

[116] OHCHR, *OHCHR and NHRIs*, https://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx.

40. Slide 4 shows that on 14 June 2017, the United Nations Commissioner for Human Rights himself stated: "[i]t is becoming clear that the measures being adopted are overly broad in scope and implementation, and have the potential to seriously disrupt the lives of thousands of women"[117] (the Court sees that).

41. At Slide 5, on 19 June [2017], Amnesty International told of "people being too scared to call hotlines and register their presence, and the situation was one of utter contempt for human dignity"[118].

42. On 1 July 2017, the Second Report of the NHRC reported more than 500 violations involving family separation, property, health, travel, work and residency[119].

43. Slide 6 is from Human Rights Watch, who reported "serious human rights violations . . . infringing on the right to free expression, separating families, interrupting medical care", and so on"[120].

44. On 18 August 2017, at Slide 7, we see the communication from the six United Nations [Special] Rapporteurs who talk about an alleged "situation of extreme gravity and serious concerns expressed at the numerous rights being infringed"[121].

45. On 30 August 2017, the NHRC issued its Third Report — again based on a substantial number of daily visits and other communications — reported about 900 complaints[122].

46. And throughout the fall of 2017, the violations continued despite the UAE's so-called mitigation measures. A team from the United Nations Office of the High Commissioner for Human Rights visited Qatar for eight days. The team met not only with representatives of ministries, agencies, but also businesses and individuals. It reviewed a large number of other cases, documents and data.

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[117] OHCHR, *Qatar diplomatic crisis: Comment by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein on impact on human rights* (14 June 2017), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21739&LangID=E.

[118] ***Amnesty International, Gulf/Qatar Dispute: Human dignity trampled and families facing uncertainty as sinister deadline passes (19 June 2017).***

[119] NHRC, Second Report Regarding the Human Rights Violations as a Result of the Blockade on the State of Qatar (1 July 2017) (hereinafter "NHRC Second Report"), p. 8; AQ, Ann. 8.

[120] Human Rights Watch, *Qatar: Isolation Causing Rights Abuses* (12 July 2017), p. 1; AQ, Ann. 10.

[121] Joint Communication from the Special Procedures Mandate Holders of the Human Rights Council to the United Arab Emirates, p. 1 (18 August 2017), p. 3; AQ, Ann. 11.

[122] ***NHRC Third Report (Annex 12)***

47. And we have quoted extensively from that report[123]. At Slide 8, you will see their conclusion, of the "[d]urable consequences of the restrictions of movement, of the durable separation of separation of families across the countries concerned, causing psychological distress".

48. Then we have 5 December 2017, where the NHRC issued its Fourth Report, again based on personal visits and other communications***[124]*.**

49. 14 December 2017, Amnesty International — this is Slide 9 — noting the picture six months after the crisis had started and stating that "ordinary people . . . continue to pay the price"[125].

50. Slide 10: Amnesty International, in June of this year, reported that "[a] year on, the situation has not improved"***[126]***. And we have already referred to the Fifth Report of the National Human Rights Committee which is in the timeline***[127]*.**

51. The UAE has also told that its discriminatory measures have had no impact[128]. These independent reports are not anecdotes. These independent reports present compelling evidence of what actually has happened, the substantial pain inflicted.

E. Other rights violated

52. These independent reports also support Qatar's claims of violations of other rights. I will refer you just briefly to tab 9 of your folder for today, which is a chart comparing the UAE's evidence on each of these other rights to the evidence we have provided on these rights. I won't take the Court through it given the time, but the Court can see that each of these rights we have presented substantial evidence compared with the UAE, who has provided very little. So that deals with marriage and family life, opinion and expression, medical care.

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[123] OHCHR Technical Mission Report, *Report on the Impact of the Gulf Crisis on Human Rights* (December 2017); AQ, Ann. 16.

[124] NHRC Fourth Report, pp. 2, 7 (Annex 17)

[125] Amnesty International, *Gulf dispute: Six months on, individuals still bear brunt of political crisis* (14 December 2017), p. 1, https://www.amnesty.org/download/Documents/MDE2276042017ENGLISH.pdf.

[126] Amnesty International, One Year since the Gulf Crisis, Families are Left Facing an Uncertain Future (5 June 2018).

[127] NHRC Fifth Report, p. 6 (Annex 22).

[128] CR 2018/13, p. 63, para. 24 (Shaw).

53. Let me say this about education and training, which was touched on yesterday. We have submitted reports from the Office of the High Commissioner for Human Rights, from Human Rights Watch, from Amnesty International and the NHRC documenting violations of the right to education. And we know nothing about the UAE's reference to an anonymized, uncertified document purporting to show a number of Qatari students still studying.

54. In fact, the documents presented by the UAE actually demonstrate the inability of Qatari students to continue their education. An e-mail from the Office of Undersecretary for Higher Education "noted that a number of students from the State of Qatar dropped out"[129]. Now Professor Shaw referred to this, but he did not respond, he did not describe the response to the naïve question that was apparently asked as to why these students had dropped out.

The PRESIDENT: Lord Goldsmith, we are approaching the end of the time allotted to Qatar, so you may wish to leave some time for the Agent to present his conclusions.

Lord GOLDSMITH: I do understand that, I do indeed, we started a little bit late as the Court will recall, but I will do that.

The PRESIDENT: I have already taken into consideration the fact that we started a bit late.

Lord GOLDSMITH: I will hand over to the Agent from Qatar with this final remark, if I may. We are not asking the Court, of course, to decide the dispute now, we have made this presentation to show that as the Court has previously defined real and imminent risk or irreparable prejudice, it is certainly more than conceivable that irreparable prejudice would occur before the decision on the merits. In the written text I make one observation in relation to a comment made about the *LaGrand* case, but I leave the Court perhaps in its own time to read what is there said, and indeed the concluding remarks that I wanted to make. Allow me, therefore Mr. President, Members of the Court now to hand over to the Agent from Qatar to close our submissions and with that I thank the Court for its kind attention.

[129] UAE Ex. 8, p. 5.

The PRESIDENT: I thank Lord Goldsmith, and now I invite the Agent of Qatar, Mr. Mohammed Abdulaziz Al-Khulaifi to present the conclusions of the Government of Qatar. You have the floor.

Mr. AL-KHULAIFI:

V. CONCLUSION

1. Thank you Mr. President, honourable Members of the Court, it is my honour to address you once again and to close the submissions by the State of Qatar.

2. The Agent of the UAE stated yesterday that we seek to conflate the UAE's "legitimate" grievances with the Government of Qatar with "opposition to persons of Qatari nationality". With respect, both parts of this statement are not true. There is nothing "legitimate" in the UAE's grievances with Qatar's Government: they are all predicated in false statements aiming to justify interference with Qatar's internal affairs and foreign policy. We are prepared to show that, when and if the UAE invokes these grievances to justify its discriminatory measures since 2017. You heard yesterday the numerous allegations made by the UAE's Agent in relation to the supposed support extended by Qatar to terrorism or terrorist groups. These are the UAE's views. Let me just emphasize that such views are not shared by the most prominent international institutions, including the United Nations, that never expressed any concern — let alone condemnation of Qatar — in that respect. But this is not the issue before the Court and should not detain us any longer.

3. The UAE's past statements or actions contradict the assertion of the "clear distinction", to quote again the UAE Agent's words, between the Qatari Government and the people of Qatar. To the contrary, the UAE's directives make explicit reference to "Qataris", and their impact is designed to be felt by Qatari people in a transparent attempt to force Qatar to agree to the UAE's demands that Qatar hand over its sovereignty to the UAE.

4. Mr. President, esteemed Members of the Court, you have heard from my distinguished colleagues that the dispute has already caused severe and lasting harm to the rights of Qataris, and continues to do so every passing day. These are the same rights that the nations of the world unanimously adopted in the text of the Convention, and the same harm that led the United Nations

Special Rapporteurs to declare the situation as one of "extreme gravity" for my country and the people of Qatar[130]. Without an indication of the provisional measures from the Court, thousands of Qataris will suffer irreparably as a result of the discriminatory measures that the UAE has enacted and continues to enforce, and any decision the Court eventually will make in respect to the rights in dispute will be deprived of full effect.

5. This is precisely the situation where the power of the Court to indicate provisional measures is designed to address. In asking the Court to exercise that power, we do not ask that it also reach any conclusions about the merits of Qatar's case, which remains to be briefed and argued, though we are confident that we will also meet our burden then. We only ask that the Court exercise its power to prevent further damage to the people of Qatar *now*. And make no mistake: this Court is Qatar's only hope to stem this harm. You have heard and seen how the UAE has answered every attempt by the State of Qatar to negotiate an amicable resolution to the human rights dispute with firm statements that its demands are "non-negotiable" or by complete silence. Therefore, only this Court can stop this deprivation of fundamental rights, protected by the Convention, at this time.

6. Mr. President, honourable Members of the Court, I end where I began, with the Preamble of the Convention: "There is no justification for racial discrimination, in theory or in practice, anywhere."[131]

7. I will now read out Qatar's Final Submissions. On the basis of the facts and law set out in our Request of 11 June 2018, and in the course of the present hearing, Qatar respectfully asks the Court, pending its judgment on the merits, to indicate the following provisional measures:

(a) The UAE shall cease and desist from any and all conduct that could result, directly or indirectly, in any form of racial discrimination against Qatari individuals and entities by any organs, agents, persons, and entities exercising UAE governmental authority in its territory, or under its direction or control. In particular, the UAE shall immediately cease and desist from violations of the human rights of Qataris under the CERD, including by:

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[130] Joint Communication from the Special Procedures Mandate Holders of the Human Rights Council to the United Arab Emirates (18 Aug. 2017), p. 3; Ann. 11.

[131] International Convention on the Elimination of All Forms of Racial Discrimination, 4 Jan. 1969, 660 *UNTS.* 195, Preamble.

(i) suspending operation of the collective expulsion of all Qataris from, and ban on entry into, the UAE on the basis of national origin;

(ii) taking all necessary steps to ensure that Qataris (or persons with links to Qatar) are not subjected to racial hatred or discrimination, including by condemning hate speech targeting Qataris, ceasing publication of anti-Qatar statements and caricatures, and refraining from any other incitement to racial discrimination against Qataris;

(iii) suspending the application of its Federal Decree Law No. (5) of 2012, On Combatting Cybercrimes, to any person who "shows sympathy . . . towards Qatar" and any other domestic laws that (*de jure* or *de facto*) discriminate against Qataris;

(iv) taking the measures necessary to protect freedom of expression of Qataris in the UAE, including by suspending the UAE's closure and blocking of transmissions by Qatari media outlets;

(v) ceasing and desisting from measures that, directly or indirectly, result in the separation of families that include a Qatari, and taking all necessary steps to ensure that families separated by the discriminatory measures are reunited (in the UAE, if that is the family's preference);

(vi) ceasing and desisting from measures that, directly or indirectly, result in Qataris being unable to seek medical care in the UAE on the grounds of their national origin and taking all necessary steps to ensure that such care is provided;

(vii) ceasing and desisting from measures that, directly or indirectly, prevent Qatari students from receiving education or training from UAE institutions, and taking all necessary steps to ensure that students have access to their educational records;

(viii) ceasing and desisting from measures that, directly or indirectly, prevent Qataris from accessing, enjoying, utilizing, or managing their property in the UAE, and taking all necessary steps to ensure that Qataris may authorize valid powers of attorney in the UAE, renew necessary business and worker licenses, and renew their leases; and

(ix) Taking all necessary steps to ensure that Qataris are granted equal treatment before tribunals and other judicial organs in the UAE, including a mechanism to challenge any discriminatory measures.

(b) The UAE shall abstain from any measure that might aggravate, extend, or make more difficult resolution of this dispute; and

(c) The UAE shall abstain from any other measure that might prejudice the rights of Qatar in the dispute before the Court.

8. Mr. President and honourable Members of the Court, I thank you for your kind attention of this urgent matter. This concludes the second round of Qatar's oral submissions. I would like also to take the opportunity to thank all members of the Registry and the interpreters for their dedicated work through the hearings. Thank you.

The PRESIDENT: I thank the Agent of Qatar, Mr. Al-Khulaifi. The Court takes note of the submission as you have just read on behalf of the Government of Qatar. The Court will meet again this afternoon at 4.30 p.m. to hear the second round of oral argument of the United Arab Emirates. The sitting is adjourned.

The Court rose at 11.45 a.m.