

**INTERNATIONAL COURT OF JUSTICE**

***APPLICATION OF THE INTERNATIONAL CONVENTION  
ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION  
(QATAR v. UNITED ARAB EMIRATES)***

**REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES TO  
PRESERVE THE UNITED ARAB EMIRATES' PROCEDURAL RIGHTS  
AND TO PREVENT QATAR FROM AGGRAVATING OR EXTENDING  
THE DISPUTE**

**SUBMITTED BY THE UNITED ARAB EMIRATES**

22 March 2019

**LIST OF ANNEXES**

<b>Annex number</b>	<b>Description of the Annex</b>
Annex 1	<i>Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar), Memorial of the Kingdom of Bahrain, the Arab Republic of Egypt, the Kingdom of Saudi Arabia and the United Arab Emirates,</i>

	Volume I of VII, 27 December 2018, Chapters I and II
Annex 2	First Riyadh Agreement, 23 and 24 November 2013, United Nations Registration Number 55378 (English translation of Arabic original)
Annex 3	Mechanism Implementing the Riyadh Agreement, 17 April 2014, United Nations Registration Number 55378 (English translation of Arabic original)
Annex 4	Supplementary Riyadh Agreement, 16 November 2014, United Nations Registration Number 55378 (English translation of Arabic original)
Annex 5	Letter from HE Mohammed Bin Abdulrahman Al-Thani (Minister of Foreign Affairs of Qatar) to HE Dr Abdullatif Bin Rashid Al Zayani (Secretary-General of the GCC), 19 February 2017 (English translation of pages 2–3 of Arabic original)
Annex 6	“Egypt cut ties with Qatar for ‘supporting terrorist organizations’”, <i>State Information Service</i> , 8 June 2017
Annex 7	“Kingdom of Saudi Arabia severs diplomatic and consular relations with Qatar 3 Jeddah”, <i>Saudi Press Agency</i> , 5 June 2017
Annex 8	“Statement of the Kingdom of Bahrain on the severance of diplomatic relations with the State of Qatar”, <i>Ministry of Foreign Affairs of the Kingdom of Bahrain</i> , 5 June 2017
Annex 9	“Chad shuts down Qatar embassy”, <i>Emirates News Agency</i> , 23 August 2017
Annex 10	“Comoros severs diplomatic relations with Qatar”, <i>Saudi Press</i>

	<i>Agency, 7 June 2017</i>
Annex 11	“Statement by the Government of Maldives”, <i>Ministry of Foreign Affairs of the Republic of Maldives, 5 June 2017</i>
Annex 12	“La Mauritanie décide de rompre ses relations diplomatiques avec Qatar”, <i>Agence Mauritanienne d’Information, 6 June 2017</i>
Annex 13	“Senegal, Gabon join boycott of Qatar”, <i>Middle East Monitor, 9 June 2017</i>
Annex 14	“Yemen cuts diplomatic ties with Qatar: state news agency”, <i>Reuters, 5 June 2017</i>
Annex 15	“Jordan downgrades relations with Qatar and bans Al Jazeera”, <i>The National, 7 June 2017</i>
Annex 16	“Niger recalls ambassador to Qatar”, <i>Khaleej Times, 10 June 2017</i>
Annex 17	<ul style="list-style-type: none"> <li>• A: Letter from the United Arab Emirates Federal Authority for Identity and Citizenship to the Ministry of Foreign Affairs and International Cooperation of the United Arab Emirates, 10 January 2019 (English translation of Arabic original)</li> <li>• B: Entry and exit movements of Qatari nationals to the United Arab Emirates, 1 June 2018 to 31 December 2018 (English translation of relevant parts of Arabic original)</li> <li>• C: Requests for entry and exit to the United Arab Emirates by Qatari nationals, 9 July 2018 to 22 December 2018 (English translation of relevant parts of Arabic original)</li> <li>• D: Qatari nationals residing in the United Arab Emirates and holding a UAE identification document (English translation of</li> </ul>

	relevant parts of Arabic original)
Annex 18	“Qatar: Hotline for mixed-families a face-saving act”, <i>Al Jazeera</i> , 11 June 2017
Annex 19	““UAE continues to violate ICJ decision””, <i>Qatar Tribune</i> , 24 January 2019
Annex 20	<i>State of Qatar v. United Arab Emirates</i> , Case No. ICERD-ISC-2018/2, <i>Note Verbale</i> from the Secretary-General of the United Nations (High Commissioner for Human Rights) to the Permanent Representative of the United Arab Emirates to the United Nations Office at Geneva, 7 May 2018, transmitting Qatar’s Communication Submitted Pursuant to Article 11 of the International Convention on the Elimination of all Forms of Racial Discrimination, 8 March 2018
Annex 21	<i>State of Qatar v. United Arab Emirates</i> , Case No. ICERD-ISC-2018/2, <i>Note Verbale</i> from the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) to the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva, 31 October 2018, transmitting <i>Note Verbale</i> from the Permanent Mission of the State of Qatar to the United Nations Office at Geneva to the Committee on the Elimination of Racial Discrimination, 29 October 2018

Annex 22	<p>Video recordings taken in Doha of blocked Federal Authority for Identity and Citizenship website (provided in soft copy only)</p> <ul style="list-style-type: none"> <li>• A: Video recording, 1 February 2019, shot at 2:48am</li> <li>• B: Video recording, 1 February 2019, shot at 3:04am</li> <li>• C: Video recording, 1 February 2019, shot at 4:10am</li> </ul>
Annex 23	<p>“Al Marri calls for extensive probe against siege nations”, <i>The Peninsula</i>, 16 September 2018</p>
Annex 24	<p>“Marri urges international community to pressure siege countries to stop human rights violations”, <i>Qatar Tribune</i>, 30 September 2018</p>
Annex 25	<p>“UN probes siege violations of Qatari students’ rights”, <i>The Peninsula</i>, 20 January 2019</p>
Annex 26	<p>“Report on UAE violations next month, says al-Marri”, <i>Gulf Times</i>, 6 December 2018</p>
Annex 27	<p>“‘745’ Emirati violations of ICJ decisions”, <i>Al-Watan</i>, 24 January 2019 (English translation of Arabic original)</p>
Annex 28	<p>“NHRC unveils report detailing continued rights violation by UAE despite ICJ decision”, <i>The Peninsula</i>, 24 January 2019</p>
Annex 29	<p>“Despite the ICJ Order ... Qatari accounts document Emirati violations”, <i>Al Jazeera</i>, 24 January 2019 (English translation of Arabic original)</p>
Annex 30	<p><i>State of Qatar v. United Arab Emirates</i>, Case No. ICERD-ISC-2018/2, <i>Note Verbale</i> from the Secretariat of the United Nations (Office of the High Commissioner for Human</p>

	Rights) to the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva, 14 December 2018
Annex 31	<i>State of Qatar v. United Arab Emirates</i> , Case No. ICERD-ISC-2018/2, <i>Note Verbale</i> from the Permanent Mission of the United Arab Emirates to the United Nations Office and Other International Organizations in Geneva to the Secretariat of the Office of the High Commissioner for Human Rights, 14 January 2019, transmitting the Supplemental Response on Issues of Jurisdiction and Admissibility of the United Arab Emirates, 14 January 2019

Pursuant to Article 50(1) of the Rules of Court, I certify that the above-listed Annexes are true copies of the originals. Pursuant to Article 51(3) of the Rules of Court, I also certify that the English-language translations of the Arabic-language documents contained in Annexes 2, 3, 4, 5, 17, 27 and 29 are accurate.

Respectfully submitted,



HE Dr Hissa Abdullah Ahmed Al-Otaiba

Ambassador of the United Arab Emirates to The Kingdom of the Netherlands

Agent of the United Arab Emirates

Done at The Hague on 22 March 2019

## **Annex 1**

*Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)*, Memorial of the Kingdom of Bahrain, the Arab Republic of Egypt, the Kingdom of Saudi Arabia and the United Arab Emirates, Volume I of VII, 27 December 2018

INTERNATIONAL COURT OF JUSTICE

**APPEAL RELATING TO THE JURISDICTION OF  
THE ICAO COUNCIL UNDER ARTICLE 84 OF  
THE CONVENTION ON INTERNATIONAL CIVIL AVIATION**

(BAHRAIN, EGYPT, SAUDI ARABIA AND UNITED ARAB EMIRATES v. QATAR)

**MEMORIAL OF THE KINGDOM OF BAHRAIN,  
THE ARAB REPUBLIC OF EGYPT,  
THE KINGDOM OF SAUDI ARABIA,  
AND THE UNITED ARAB EMIRATES**

**Volume I of VII**

27 DECEMBER 2018



## TABLE OF CONTENTS

	Page
<b>CHAPTER I INTRODUCTION</b>	1
<b>Section 1. Procedural history before the ICAO Council</b>	5
<b>Section 2. Jurisdiction and scope of the Appeal</b>	9
<b>Section 3. The real issue between the Parties</b>	13
<b>Section 4. Novel character and significance of the question before the Court</b>	16
<b>Section 5. Outline of the Memorial</b>	19
<b>CHAPTER II THE REAL DISPUTE BETWEEN THE APPELLANTS AND QATAR</b>	22
<b>Section 1. Introduction</b>	22
<b>Section 2. Qatar's failure to confront terrorism and extremism prior to the Riyadh Agreements</b>	27
<b>Section 3. The Riyadh Agreements</b>	32
<b>Section 4. Qatar's violations of the Riyadh Agreements and its other obligations under international law</b>	40
A. QATAR'S SUPPORT FOR THE MUSLIM BROTHERHOOD AND OTHER EXTREMIST GROUPS	40
B. FAILURE TO EXTRADITE OR PROSECUTE TERRORISTS	43
C. STATE-SPONSORED DISSEMINATION OF HATE SPEECH AND INCITEMENT TO VIOLENCE ON <i>AL JAZEERA</i>	46
D. VIOLATION OF THE PRINCIPLE OF NON-INTERVENTION	48
E. QATAR'S REPUDIATION OF THE RIYADH AGREEMENTS	49
F. RANSOM PAYMENTS TO TERRORISTS	50

<b>Section 5.</b>	<b>The Appellants have reacted lawfully to Qatar’s violations of international law</b>	52
A.	THE AIRSPACE RESTRICTIONS WERE ADOPTED BY THE APPELLANTS AS LAWFUL COUNTERMEASURES	53
B.	COUNTERMEASURES AS A CIRCUMSTANCE PRECLUDING WRONGFULNESS UNDER GENERAL INTERNATIONAL LAW	54
C.	IMPLEMENTATION AND ENFORCEMENT OF THE RIYADH AGREEMENTS	58
<b>Section 6.</b>	<b>Summary</b>	60
<b>CHAPTER III</b>	<b>FIRST GROUND OF APPEAL: LACK OF DUE PROCESS</b>	62
<b>Section 1.</b>	<b>The judicial function of the ICAO Council</b>	63
<b>Section 2.</b>	<b>The proceedings before the ICAO Council</b>	69
A.	QATAR’S APPLICATIONS	69
B.	THE APPELLANTS’ PRELIMINARY OBJECTIONS	73
C.	THE HEARING ON THE PRELIMINARY OBJECTIONS	76
D.	THE DECISION OF THE ICAO COUNCIL	78
<b>Section 3.</b>	<b>The procedure adopted by the ICAO Council violated fundamental requirements of due process and the ICAO Rules</b>	78
A.	GRAVE AND MANIFEST VIOLATIONS OF FUNDAMENTAL PRINCIPLES OF DUE PROCESS	79
	1. <i>Requirement to hold deliberations as a collegial formation</i>	79
	2. <i>Requirement to deliver a reasoned decision</i>	82

	3. <i>The principle of equality of the parties and respect for the right to have a reasonable opportunity to be heard</i>	85
	B. THE ICAO COUNCIL’S ABDICATION OF ITS DUTY TO INTERPRET THE CHICAGO CONVENTION	88
	C. REQUIREMENT TO ACT IN CONFORMITY WITH APPLICABLE PROCEDURAL RULES	90
	<b>Section 4. Conclusion: The Decision is null and void <i>ab initio</i></b>	91
<b>CHAPTER IV</b>	<b>THE ICAO COUNCIL IS ABLE TO RULE UPON OBJECTIONS TO ADMISSIBILITY AS A PRELIMINARY MATTER</b>	93
	<b>Section 1. The distinction between objections to jurisdiction and objections to admissibility in international procedural law</b>	96
	A. THE NOTION OF OBJECTIONS TO JURISDICTION	97
	B. OBJECTIONS TO ADMISSIBILITY	101
	C. OBJECTIONS TO JURISDICTION AND ADMISSIBILITY IN INTERNATIONAL JUDICIAL PRACTICE	104
	<b>Section 2. The proper scope of preliminary objections before the ICAO Council</b>	107
	<b>Section 3. Conclusion</b>	116
<b>CHAPTER V</b>	<b>SECOND GROUND OF APPEAL: THE ICAO COUNCIL ERRED IN FACT AND IN LAW IN NOT ACCEPTING THE FIRST PRELIMINARY OBJECTION</b>	117
	<b>Section 1. Introduction</b>	117
	<b>Section 2. The limited jurisdiction of the ICAO Council under Article 84 of the Chicago Convention</b>	120

A.	THE LIMITED JURISDICTION OF THE ICAO COUNCIL PURSUANT TO THE TEXT OF ARTICLE 84 OF THE CHICAGO CONVENTION	121
B.	THE LIMITED SCOPE OF JURISDICTION OF THE ICAO COUNCIL UNDER ARTICLE 84 IS CONFIRMED BY THE NARROW AND SPECIALIZED FUNCTIONS OF ICAO	123
<b>Section 3.</b>	<b>The disagreement submitted by Qatar to the ICAO Council would necessarily require the Council to adjudicate upon matters falling outside its jurisdiction</b>	127
<b>Section 4.</b>	<b>The law applicable in determining the jurisdiction <i>ratione materiae</i> of the ICAO Council</b>	134
A.	INTRODUCTION	134
B.	THE “REAL ISSUE” TEST REQUIRES AN OBJECTIVE CHARACTERIZATION OF THE SUBJECT-MATTER OF THE DISPUTE	135
C.	THE “REAL ISSUE” TEST MAY DETERMINE JURISDICTION <i>RATIONE MATERIAE</i>	139
D.	APPLICATION OF THE “REAL ISSUE” TEST IN THE CIRCUMSTANCES OF THIS CASE	146
E.	THE DECISION IN <i>APPEAL RELATING TO THE JURISDICTION OF THE ICAO COUNCIL (INDIA V. PAKISTAN)</i> IS INAPPOSITE	151
F.	CONCLUSION ON THE “REAL ISSUE” TEST	155
<b>Section 5.</b>	<b>In the alternative, Qatar’s claims are inadmissible as adjudication on the merits would be incompatible with judicial propriety</b>	156
A.	JUDICIAL PROPRIETY AND THE NEED TO PROTECT THE JUDICIAL FUNCTION AND JUDICIAL INTEGRITY	156

B.	JUDICIAL PROPRIETY AND THE PROPER EXERCISE OF THE JUDICIAL FUNCTION IN THE CIRCUMSTANCES OF THE PRESENT CASE	165
<b>Section 6.</b>	<b>Conclusion</b>	168
<b>CHAPTER VI</b>	<b>THIRD GROUND OF APPEAL: THE ICAO COUNCIL ERRED IN REJECTING THE SECOND PRELIMINARY OBJECTION</b>	171
<b>Section 1.</b>	<b>Prior negotiations constitute a precondition to the ICAO Council’s jurisdiction under Article 84 of the Chicago Convention</b>	172
A.	ARTICLE 84 OF THE CHICAGO CONVENTION CONTAINS A PRECONDITION OF NEGOTIATION	173
B.	CONTENT OF THE PRECONDITION OF NEGOTIATION	182
C.	THE PRECONDITION OF NEGOTIATIONS MUST BE FULFILLED PRIOR TO SEISIN	186
<b>Section 2.</b>	<b>Qatar failed to satisfy the jurisdictional precondition of negotiations before filing its ICAO Application</b>	188
A.	QATAR’S INITIAL POSITION IN THE ICAO MEMORIAL	191
B.	QATAR’S NEW POSITION IN ITS RESPONSE TO THE PRELIMINARY OBJECTIONS	196
1.	<i>Qatar’s supposed attempts to negotiate within ICAO and other international bodies</i>	197
2.	<i>Qatar’s other supposed attempts to initiate negotiations</i>	201
3.	<i>Qatar’s legal arguments in its Response to the Preliminary Objections are flawed</i>	206
C.	CONCLUSION	208

<b>Section 3.</b>	<b>Qatar’s claim is inadmissible due to its failure to comply with Article 2(g) of the ICAO Rules</b>	<b>209</b>
<b>CHAPTER VII</b>	<b>CONCLUSIONS</b>	<b>210</b>
A.	FIRST GROUND OF APPEAL	214
B.	SECOND GROUND OF APPEAL	214
C.	THIRD GROUND OF APPEAL	214
<b>SUBMISSIONS</b>		<b>215</b>
<b>CERTIFICATION</b>		<b>219</b>
<b>LIST OF ANNEXES</b>		<b>221</b>

## GLOSSARY OF PRINCIPAL DEFINED TERMS, ABBREVIATIONS AND ACRONYMS

<b>Appellants</b>	The Kingdom of Bahrain, the Arab Republic of Egypt, the Kingdom of Saudi Arabia and the United Arab Emirates
<b>Bahrain</b>	The Kingdom of Bahrain
<b>CAT</b>	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women, 3 September 1981
<b>CERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966
<b>Chicago Convention</b>	Convention on International Civil Aviation, Chicago, 7 December 1944
<b>Egypt</b>	The Arab Republic of Egypt
<b>FIR(s)</b>	Flight information region(s)
<b>First Riyadh Agreement</b>	First Riyadh Agreement, 23 and 24 November 2013
<b>GCC</b>	Gulf Cooperation Council
<b>IASTA</b>	International Air Services Transit Agreement, Chicago, 7 December 1944
<b>ICAO</b>	International Civil Aviation Organization

<b>ICAO Application</b>	Application (A) of the State of Qatar Relating to the Disagreement on the Interpretation and Application of the Convention on International Civil Aviation (Chicago, 1944), 30 October 2017
<b>ICAO Council</b>	Council of the International Civil Aviation Organization
<b>ICAO Council Decision or Decision</b>	Decision of the Council of the International Civil Aviation Organization on the Preliminary Objection in the Matter: The State of Qatar and The Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Saudi Arabia and the United Arab Emirates (2017) – Application (A), 29 June 2018
<b>ICAO Memorial</b>	Memorial appended to Application (A) of the State of Qatar, Disagreement on the Interpretation and Application of the Convention International Civil Aviation (Chicago,1944), 30 October 2017
<b>ICAO MID Office</b>	ICAO Middle East Regional Office
<b>ICAO Preliminary Objections</b>	Preliminary Objections of the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Saudi Arabia and the United Arab Emirates in Re Application (A) of the State of Qatar Relating to the Disagreement Arising under the Convention on International Civil Aviation done at Chicago on 7 December 1944, 19 March 2018

<b>ICAO Rejoinder</b>	Rejoinder to the State of Qatar’s Response to the Respondents’ Preliminary Objections of the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Saudi Arabia and the United Arab Emirates In Re Application (A) of the State of Qatar Relating to the Disagreement Arising under the Convention on International Civil Aviation done at Chicago on 7 December 1944, 12 June 2018
<b>ICAO Response to the Preliminary Objections</b>	Response of the State of Qatar to the Preliminary Objections of the Respondents; In re Application (A) of the State of Qatar Relating to the Disagreement on the interpretation and application of the Convention on International Civil Aviation (Chicago, 1944), 30 April 2018
<b>ICAO Rules</b>	Rules for the Settlement of Disagreements, approved by the ICAO Council on 9 April 1957, and amended on 10 November 1975; ICAO document 7782/2
<b>ICJ Application</b>	Joint Application Instituting Proceedings, Appeal Against a Decision of the ICAO Council dated 29 June 2018 on Preliminary Objections (Application (A), <i>Kingdom of Bahrain, Arab Republic of Egypt, the Kingdom of Saudi Arabia and the United Arab Emirates v. State of Qatar</i> ), 4 July 2018
<b>ICSFT</b>	International Convention for the Suppression of the Financing of Terrorism, 9 December 1999
<b>ILC</b>	International Law Commission
<b>IRGC</b>	Iranian Islamic Revolutionary Guard Corps
<b>Implementing Mechanism</b>	Mechanism Implementing the Riyadh Agreement, 17 April 2014

<b>MENA</b>	Middle East and North Africa
<b>NOTAMs</b>	Notices to Airmen
<b>Qatar</b>	State of Qatar
<b>Riyadh Agreements</b>	First Riyadh Agreement, 23 and 24 November 2013 Mechanism Implementing the Riyadh Agreement, 17 April 2014 Supplementary Riyadh Agreement, 16 November 2014
<b>Saudi Arabia</b>	The Kingdom of Saudi Arabia
<b>Supplementary Riyadh Agreement</b>	Supplementary Riyadh Agreement, 16 November 2014
<b>UAE</b>	The United Arab Emirates
<b>UNCLOS</b>	United Nations Convention on the Law of the Sea, 10 December 1982

## CHAPTER I INTRODUCTION

1.1 This case concerns an appeal by the Kingdom of Bahrain (*Bahrain*), the Arab Republic of Egypt (*Egypt*), the Kingdom of Saudi Arabia (*Saudi Arabia*) and the United Arab Emirates (*UAE*) (together, the *Appellants*) against the Decision of the Council of the International Civil Aviation Organization (*ICAO Council*) dated 29 June 2018 (*Decision*) in respect of proceedings commenced by the State of Qatar (*Qatar*)<sup>1</sup>. The Appeal was filed by means of a Joint Application to the Court on 4 July 2018 (*ICJ Application*)<sup>2</sup>. In its Decision, the ICAO Council rejected the Preliminary Objections of the Appellants contesting the competence<sup>3</sup> of the ICAO Council in respect of proceedings initiated by Qatar by an Application filed on 30 October 2017 (*ICAO Application*)<sup>4</sup>, pursuant to Article 84 of the Convention on International

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<sup>1</sup> **Vol. V, Annex 52**, Decision of the ICAO Council on the Preliminary Objection in the Matter: the State of Qatar and the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Saudi Arabia and the United Arab Emirates (2017) – Application (A), 29 June 2018 (*ICAO Council Decision*); **Vol. V, Annex 53**, ICAO Council – 214th Session, Summary Minutes of the Eighth Meeting of 26 June 2018, ICAO document C-MIN 214/8, 23 July 2018; **Vol. V, Annex 55**, ICAO Council – 214th Session, Summary Minutes of the Eleventh Meeting of 29 June 2018, ICAO document C-MIN 214/11 (Draft), 10 September 2018.

<sup>2</sup> Joint Application Instituting Proceedings, Appeal Against a Decision of the ICAO Council dated 29 June 2018 on Preliminary Objections (Application (A)), (*Kingdom of Bahrain, Arab Republic of Egypt, the Kingdom of Saudi Arabia and the United Arab Emirates v. State of Qatar*), 4 July 2018 (*ICJ Application*).

<sup>3</sup> The Appellants use the term “competence” to refer to the ability of an adjudicatory body as a matter of law to adjudicate upon a dispute submitted to it, as such it encompasses both questions of the adjudicatory body’s jurisdiction over a dispute, and issues as to the admissibility of claims submitted to it. See Chapter IV below.

<sup>4</sup> **Vol. III, Annex 23**, Application (A) of the State of Qatar; Relating to the Disagreement on the Interpretation and Application of the Convention on International Civil Aviation (Chicago, 1944) and its Annexes, 30 October 2017 (*ICAO Application*).

Civil Aviation (*Chicago Convention*)<sup>5</sup>. By its ICAO Application, Qatar alleged breaches of the Chicago Convention by the Appellants as the result of airspace restrictions adopted on 5 June 2017 in respect of Qatar-registered aircraft.

1.2 The ICJ Application advances three grounds for the appeal against the ICAO Council Decision as follows:

- (a) *First*, the Decision is null and void, and should be set aside, on the grounds that the procedure adopted by the ICAO Council, including the absence of a reasoned opinion, was manifestly flawed and in violation of fundamental principles of due process, which constitute general principles of law, as well as violations of the ICAO Council's own applicable procedural rules;
- (b) *Second*, the ICAO Council erred in fact and in law in rejecting the First Preliminary Objection made by the Appellants in respect of the competence of the ICAO Council to hear the disagreement; namely that determination of the real issue in dispute between Qatar and the Appellants would require the ICAO Council to rule on the lawfulness of countermeasures (including the airspace restrictions) adopted by the Appellants to induce compliance by Qatar with its obligations under international law – including in respect of the principle of non-intervention and in respect of terrorism and violent extremism – and in particular, violations of Security Council Resolutions, binding

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<sup>5</sup> **Vol. II, Annex 1**, Convention on International Civil Aviation, signed at Chicago on 7 December 1944, 15 United Nations, *Treaty Series (UNTS)* 295, entered into force on 4 April 1947 (*Chicago Convention*).

international and regional agreements, and the Riyadh Agreements<sup>6</sup> concluded under the auspices of the Gulf Cooperation Council (*GCC*), and that this dispute is wholly unrelated to and manifestly beyond the limited competence conferred on it by Article 84 of the Chicago Convention; and

- (c) *Third*, the ICAO Council erred in fact and in law in rejecting the Second Preliminary Objection made by the Appellants in respect of the competence of the ICAO Council to hear the disagreement, namely that Qatar had not complied with the necessary precondition to the jurisdiction of the ICAO Council, contained in Article 84 of the Chicago Convention, of first attempting to resolve the disagreement regarding the airspace restrictions through negotiations with the Appellants, prior to submitting its Application to the ICAO Council; and Qatar also failed to comply with the attendant procedural requirement in Article 2(g) of the ICAO Rules for the Settlement of Differences (*ICAO Rules*)<sup>7</sup> of establishing in its Memorial that negotiations to settle the disagreement had taken place between the Parties, but were unsuccessful.

1.3 By Order dated 25 July 2018, the Court fixed 27 December 2018 as the time limit for the filing of the Memorial by the Appellants, and 27 May 2019 as

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<sup>6</sup> **Vol. II, Annexes 19-21**, First Riyadh Agreement, 23 and 24 November 2013; Implementing Mechanism, 17 April 2014; Supplementary Riyadh Agreement, 16 November 2014 (collectively the *Riyadh Agreements*).

<sup>7</sup> **Vol. II, Annex 6**, Rules for the Settlement of Differences, approved by the ICAO Council on 9 April 1957, and amended on 10 November 1975, ICAO document 7782/2 (*ICAO Rules*), Art. 2(g).

the time limit for the filing of the Counter-Memorial by Qatar. This Memorial is submitted pursuant to that Order<sup>8</sup>.

1.4 As set out below, beyond the issues of procedural fairness and Qatar’s compliance with the precondition of negotiations contained in Article 84 of the Chicago Convention, this Appeal raises the novel and far-reaching question of whether an organ of a United Nations specialized agency of a technical nature, composed of State representatives but exercising judicial functions pursuant to a narrowly defined compromissory clause, may make legally binding decisions in respect of complex matters of fact and law that are wholly unrelated to, and manifestly beyond, its defined competence *ratione materiae*. In the present case, the Appellants submit that the consent of States Parties to the competence of the ICAO Council under Article 84 of the Chicago Convention does not extend to adjudication of disputes relating to violations of the principle of non-intervention, nor obligations as to terrorism and violent extremism, in response to which the airspace restrictions were adopted as lawful countermeasures.

1.5 It is notable that in its Memorial for Application (A) before the ICAO Council (*ICAO Memorial*), Qatar admitted that “the aviation aspects” of the dispute between the Parties arose because “[t]he Respondents . . . repeatedly gave an ultimatum to the State of Qatar *on matters unrelated to air navigation and air transport*.”<sup>9</sup> After the Appellants had raised their Preliminary Objections before the ICAO Council, Qatar shifted its position, claiming that

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<sup>8</sup> *Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)*, Order of 25 July 2018.

<sup>9</sup> **Vol. III, Annex 23**, Memorial appended to Application (A) of the State of Qatar; Disagreement on the Interpretation and Application of the Convention on International Civil Aviation (Chicago, 1944) and its Annexes, 30 October 2017 (*ICAO Memorial*), Sec. (g) (emphasis added).

the “core issue” relates to the Chicago Convention<sup>10</sup>. Nonetheless, while Qatar denied that it had breached its obligations in matters “unrelated to air navigation and air transport”, it did not deny that those very same allegations were the basis for the disagreement in respect of the Chicago Convention. The *real issue* therefore is whether the wrongfulness (if any) of the Appellants’ airspace restrictions under the Chicago Convention is precluded on the grounds that they constitute lawful countermeasures in response to wholly unrelated breaches of international law by Qatar. As such, adjudication of the dispute separating the Parties is manifestly *ultra vires* the ICAO Council, because the Council clearly is not competent under Article 84 to adjudicate or otherwise make legally binding decisions in respect of allegations of the breach of obligations arising from the principle of non-intervention and the obligations with respect to the suppression of terrorism and extremism.

### **Section 1. Procedural history before the ICAO Council**

1.6 This section briefly outlines the essential procedural history before the ICAO Council. A more detailed discussion of the proceedings is contained in Chapter III below.

1.7 On 30 October 2017, Qatar submitted two applications and accompanying Memorials to the ICAO Council. Qatar’s Application (A) was submitted to the Council pursuant to Article 84 of the Chicago Convention. It names Egypt, Bahrain, Saudi Arabia and the UAE as Respondents, and alleges that, as a result of the adoption of the airspace restrictions of 5 June 2017, they

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<sup>10</sup> **Vol. IV, Annex 25**, Response of the State of Qatar to the Preliminary Objections of the Respondents; In re Application (A) of the State of Qatar Relating to the Disagreement on the interpretation and application of the Convention on International Civil Aviation (Chicago, 1944) and its Exhibits, 30 April 2018 (*ICAO Response to the Preliminary Objections*), para. 43.

have violated various provisions of the Chicago Convention<sup>11</sup>. The other application (*Application (B)*) was submitted to the ICAO Council pursuant to Article II, Section 2, of the International Air Services Transit Agreement, Chicago, 7 December 1944 (*IASTA*). It names Egypt, Bahrain and the UAE as Respondents, and alleges that, as a result of the adoption of the airspace restrictions, they have violated their obligations under the IASTA<sup>12</sup>.

1.8 The present case concerns only the ICAO Council’s Decision in respect of Application (A). The decision of the ICAO Council in respect of Qatar’s Application (B) is the subject of the separate proceedings before the Court brought by Bahrain, Egypt and the UAE in *Appeal Relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt and United Arab Emirates v. Qatar)*.

1.9 On 19 March 2018, the Appellants raised two Preliminary Objections in respect of the competence of the ICAO Council to hear Qatar’s ICAO

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<sup>11</sup> **Vol. III, Annex 23**, ICAO Application. In addition, Qatar alleged violations of “other principles of international law” and “other rules of international law”, including the United Nations Charter and the United Nations Convention on the Law of the Sea (ICAO Application, p. 1, ICAO Memorial, Secs (e) and (f)). The ICAO Council is manifestly without jurisdiction over those claims.

<sup>12</sup> See *Appeal Relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt, and United Arab Emirates v. Qatar)*, Memorial of Bahrain, Egypt and the United Arab Emirates (*BEUM*), **Vol. III, Annex 23**, Application (B) and Memorial of the State of Qatar Relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement, 30 October 2017. Again, Qatar alleged violations of “other principles of international law” and “other rules of international law” including the United Nations Charter. (*Ibid.*, Application, p. 1, Memorial, Secs (e) and (f).) The ICAO Council is manifestly without jurisdiction over those claims.

Application<sup>13</sup>. The first preliminary objection was that the ICAO Council was not competent to decide the legality of the measures adopted by the Respondents, as it would require the ICAO Council to adjudicate, among other elements, whether Qatar has breached its obligations under international law with regard to matters clearly falling outside of the Chicago Convention. The second preliminary objection was that the ICAO Council was not competent, as Qatar had failed to satisfy the procedural precondition to its competence of prior negotiations under Article 84 of the Chicago Convention, and had failed to comply with Article 2(g) of the ICAO Rules which requires that the Memorial contain “[a] statement that negotiations to settle the disagreement had taken place between the parties but were not successful”<sup>14</sup>. Similar preliminary objections were raised on the same date by Bahrain, Egypt and the UAE in respect of Qatar’s Application (B)<sup>15</sup>.

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<sup>13</sup> **Vol. III, Annex 24**, Preliminary Objections of the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Saudi Arabia and the United Arab Emirates in Re Application (A) of the State of Qatar Relating to the Disagreement Arising under the Convention on International Civil Aviation done at Chicago on 7 December 1944, 19 March 2018 (*ICAO Preliminary Objections*). See *Appeal Relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt, and United Arab Emirates v. Qatar)*, **BEUM, Vol. III, Annex 24**, Preliminary Objections of the Arab Republic of Egypt, the Kingdom of Bahrain and the United Arab Emirates before the ICAO Council in respect of Application (B), 19 March 2018.

<sup>14</sup> **Vol. II, Annex 6**, ICAO Rules, Art. 2(g).

<sup>15</sup> See *Appeal Relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt, and United Arab Emirates v. Qatar)*, **BEUM, Vol. III, Annex 24**, Preliminary Objections of the Arab Republic of Egypt, the Kingdom of Bahrain, and the United Arab Emirates before the ICAO Council in respect of Application (B), 19 March 2018.

1.10 Following the filing of response submissions by Qatar on 30 April 2018<sup>16</sup>, and of rejoinder submissions by the Appellants on 12 June 2018<sup>17</sup>, the ICAO Council included the issue on the agenda of its 214<sup>th</sup> session on 26 June 2018.

1.11 At the conclusion of that meeting, at which the four Respondents were given insufficient time adequately to present their case, the ICAO Council voted to reject what it referred to as the “Preliminary Objection” – in the singular – in respect of each Application. The ICAO Council’s formal Decision in respect of the “Preliminary Objection”, reflecting the votes cast on 26 June 2018, was adopted at the ICAO Council meeting on 29 June 2018<sup>18</sup>.

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<sup>16</sup> **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections. See *Appeal Relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt, and United Arab Emirates v. Qatar)*, **BEUM, Vol. III, Annex 25**, Response of the State of Qatar to the Preliminary Objections of the Respondents; In re Application (B) of the State of Qatar Relating to the Disagreement on the interpretation and application of the International Air Services Transit Agreement (Chicago, 1944), 30 April 2018.

<sup>17</sup> **Vol. IV, Annex 26**, Rejoinder to the State of Qatar’s Response to the Respondents’ Preliminary Objections of the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Saudi Arabia and the United Arab Emirates In Re Application (A) of the State of Qatar Relating to the Disagreement Arising under the Convention on International Civil Aviation done at Chicago on 7 December 1944, 12 June 2018, (**ICAO Rejoinder**); see also *Appeal Relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt, and United Arab Emirates v. Qatar)*, **BEUM, Vol. IV, Annex 26**, Rejoinder to the State of Qatar’s Response to the Preliminary Objections of the Arab Republic of Egypt, the Kingdom of Bahrain, and the United Arab Emirates in respect of Application (B), 12 June 2018.

<sup>18</sup> **Vol. V, Annex 52**, ICAO Council Decision; **Vol. V, Annex 53**, ICAO Council – 214th Session, Summary Minutes of the Eighth Meeting of 26 June 2018, ICAO document C-MIN 214/8, 23 July 2018; see also *Appeal Relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt, and United Arab Emirates v. Qatar)*, **BEUM, Vol. V, Annex 52**, Decision of the ICAO Council of the International Civil Aviation Organization on the Preliminary Objection in the Matter: The State of Qatar and The Arab Republic of Egypt, the Kingdom of Bahrain, and the United Arab Emirates (2017) – Application (B), 29 June 2018.

1.12 Although the ICAO Council was exercising judicial functions as required by Article 84, the ICAO Council Decision was reached, *inter alia*, without any deliberation, without providing any reasons whatsoever in support of its conclusions, as required by its applicable procedural rules, and by a secret vote of State representatives despite the Respondents' request for a roll call with open vote.

## **Section 2. Jurisdiction and scope of the Appeal**

1.13 The Court has jurisdiction over the present Appeal by virtue of Article 84 of the Chicago Convention, read in conjunction with Articles 36(1) and 37 of the Statute of the Court.

1.14 Article 84 of the Chicago Convention provides:

### *“Settlement of Disputes*

If any disagreement between two or more contracting States relating to the interpretation or application of this Convention and its Annexes cannot be settled by negotiation, it shall, on the application of any State concerned in the disagreement, be decided by the Council. No member of the Council shall vote in the consideration by the Council of any dispute to which it is a party. Any contracting State may, subject to Article 85, appeal from the decision of the Council to an *ad hoc* arbitral tribunal agreed upon with the other parties to the dispute or to the Permanent Court of International Justice. Any such appeal shall be notified to the Council within sixty days of receipt of notification of the decision of the Council.”

1.15 Pursuant to Article 37 of the Statute of the Court, the reference to the Permanent Court of International Justice in Article 84 of the Chicago Convention is to be read as a reference to the International Court of Justice. This is the settled jurisprudence of the Court, as indicated in *Barcelona*

*Traction, Light and Power Company, Limited*<sup>19</sup>, and specifically confirmed in respect of Article 84 of the Chicago Convention in *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*<sup>20</sup>.

1.16 The Court has previously held that the appellate jurisdiction conferred on it by Article 84 encompasses appeals against decisions of the ICAO Council regarding preliminary objections to its jurisdiction<sup>21</sup>.

1.17 The scope of the Court's jurisdiction under Article 84 is limited to an appeal of the ICAO Council Decision. The Court's appellate jurisdiction under Article 84 is not a jurisdiction of first instance, nor is its competence *ratione materiae* more extensive than that which is conferred on the ICAO Council itself.

1.18 The first ground of appeal arises directly out of the manner in which the ICAO Council dealt with the Preliminary Objections raised by the Appellants. The defects in the proceedings, and the consequences thereof for the validity of the ICAO Council Decision, are a matter for appreciation and decision by the Court.

1.19 The second and third grounds, however, involve a *de novo* consideration by this Court of the competence of the ICAO Council over Qatar's ICAO Application. As the Court observed in *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, in such proceedings,

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<sup>19</sup> *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain), Preliminary Objections, Judgment, I.C.J. Reports 1964*, pp. 26-39; see also *Aegean Sea Continental Shelf (Greece v. Turkey), Judgment, I.C.J. Reports 1978*, p. 14.

<sup>20</sup> *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan), Judgment, I.C.J. Reports 1972*, p. 53, para. 15.

<sup>21</sup> *Ibid.*, pp. 55-56, para. 18.

despite the fact that they are brought by ordinary Application of one State against another, such that “[t]he case is presented to the Court in the guise of an ordinary dispute between States (and such a dispute underlies it) . . . it is the act of a third entity – the Council of ICAO – which one of the Parties is impugning and the other defending.”<sup>22</sup> In particular:

“... the appeal to the Court contemplated by the Chicago Convention and the Transit Agreement [i.e., IASTA] must be regarded as an element of the general regime established in respect of ICAO. In thus providing for judicial recourse by way of appeal to the Court against decisions of the Council concerning interpretation and application . . . the Chicago Treaties gave member States, and through them the Council, the possibility of ensuring a certain measure of supervision by the Court over those decisions. To this extent, these Treaties enlist the support of the Court for the good functioning of the Organization, and therefore the first reassurance for Council lies in the knowledge that means exist for determining whether a decision as to its own competence is in conformity or not with the provisions of the treaties governing its action.”<sup>23</sup>

1.20 In any event, in the present case, a *de novo* consideration of the issue raised as to the ICAO Council’s competence is unavoidable, because, as discussed below in Chapter III, the ICAO Council provided no reasons whatsoever to justify its Decision. The Court thus has no option but to examine the question afresh for itself.

1.21 Given that the issue before the Court is an appeal against the ICAO Council Decision as to its competence, there is no question of the Court ruling

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<sup>22</sup> *Ibid.*, p. 60, para. 26.

<sup>23</sup> *Ibid.*, pp. 60-61, para. 26.

upon the merits of the dispute between the Parties, including Qatar’s claims, Qatar’s internationally wrongful acts in respect of which the Appellants have adopted countermeasures, and whether the airspace restrictions adopted by the Appellants are indeed lawful countermeasures such that any wrongfulness is precluded. As the Court also noted in *Appeal Relating to the Jurisdiction of the ICAO Council (India v Pakistan)*:

“... with the substance of this dispute as placed before the Council, and the facts and contentions of the Parties relative to it, the Court has nothing whatever to do in the present proceedings, except in so far as these elements may relate to the purely jurisdictional issue which alone has been referred to it, namely the competence of the Council to hear and determine the case . . .”<sup>24</sup>

1.22 The Court has observed that “[i]n principle, a party raising preliminary objections is entitled to have these objections answered at the preliminary stage of the proceedings”<sup>25</sup>. The resolution as a preliminary matter of the Appellants’ objections to the competence of the ICAO Council to adjudicate Qatar’s claims (as with the resolution of the preliminary objections of any respondent State) implicates important considerations of principle deriving from the consensual basis for jurisdiction in international law. As the Court recognized (albeit in a somewhat different context) in *Appeal Relating to the Jurisdiction of the ICAO Council (India v Pakistan)*:

“... for the party raising a jurisdictional objection, its significance will also lie in the possibility it may offer of avoiding, not only a decision, but even a hearing,

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<sup>24</sup> *Ibid.*, p. 51, para. 11.

<sup>25</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007*, p. 852, para. 51.

on the merits, – a factor which is of prime importance in many cases. An essential point of legal principle is involved here, namely that a party should not have to give an account of itself on issues of merits before a tribunal which lacks jurisdiction in the matter, or whose jurisdiction has not yet been established.”<sup>26</sup>

1.23 In the present case, the Court should rule that the Appellants are not required to enter into issues of the merits of the dispute before the ICAO Council where the real issue in the dispute, which concerns Qatar’s internationally wrongful acts and the Appellants’ countermeasures adopted to induce its compliance, is manifestly beyond the ICAO Council’s competence under Article 84 of the Chicago Convention.

### **Section 3. The real issue between the Parties**

1.24 In evaluating the scope of the ICAO Council’s jurisdiction under Article 84 of the Chicago Convention, the Court is not confined to the characterization of the dispute as set out in Qatar’s ICAO Application. As the Court recently confirmed in its Judgment on the Preliminary Objection in *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*:

“It is for the Court itself . . . to determine on an objective basis the subject-matter of the dispute between the parties, that is, to ‘isolate the real issue in the case and to identify the object of the claim’ . . .”<sup>27</sup>

1.25 As set out in Chapter II, the real issue in this case is not the interpretation or application of the Chicago Convention. The airspace

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<sup>26</sup> *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, Judgment, *I.C.J. Reports 1972*, p. 56, para. 18(b).

<sup>27</sup> *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Preliminary Objection, Judgment, *I.C.J. Reports 2015*, p. 602, para. 26; see also *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment of 6 June 2018, para. 48 (“[t]he matter is one of substance, not of form”).

restrictions beginning on 5 June 2017 – which form the subject-matter of Qatar’s Application before the ICAO Council – were adopted by the Appellants as countermeasures to induce the cessation by Qatar of its prior violations of fundamental obligations under international law. Qatar is in breach of the principle of non-intervention and, with respect to terrorism and extremism, particularly its obligations under the Riyadh Agreements<sup>28</sup> concluded for the specific purpose of putting an end to such unlawful conduct, as well as applicable Security Council Resolutions. Pursuant to the Riyadh Agreements, Qatar expressly undertook to cease its long-standing support of all hostile entities and groups, including the Muslim Brotherhood, that pose threats to or target the GCC countries an issue of particular interest for Egypt, and to refrain from incitement of extremism on its State-owned and -controlled news network *Al Jazeera*<sup>29</sup>.

1.26 The Riyadh Agreements included an Implementing Mechanism that specifically recognized the right of its States parties to take countermeasures to ensure compliance with its provisions, reinforcing the existing right in customary international law<sup>30</sup>. Despite these undertakings, Qatar continued to breach its obligations. Notably, it continued to harbour members of the Muslim Brotherhood and certain terrorist suspects and funders of terrorism on its territory – including Al-Qaida operatives named on the United Nations Security Council Sanctions Lists – who provided financing and support to extremist

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<sup>28</sup> **Vol. II, Annexes 19-21**, Riyadh Agreements.

<sup>29</sup> **Vol. II, Annex 19**, First Riyadh Agreement, 23 and 24 November 2013, Art. 2; **Vol. II, Annex 20**, Implementing Mechanism, 17 April 2014, Arts 1 and 2; **Vol. II, Annex 21**, Supplementary Riyadh Agreement, 16 November 2014, Art. 3(c) and (d).

<sup>30</sup> **Vol. II, Annex 20**, Implementing Mechanism, 17 April 2014, Art. 3.

groups<sup>31</sup>. Further, in April 2017, Qatar paid as much as US\$1 billion as a “ransom” payment to terrorist groups<sup>32</sup>.

1.27 In view of these persistent breaches, on 5 June 2017, the Appellants terminated diplomatic relations with Qatar and – consistent with their simultaneous declarations<sup>33</sup> – took various countermeasures, including airspace restrictions, to induce the cessation of Qatar’s unlawful conduct. The airspace restrictions are directly and inextricably linked to Qatar’s breach of its international obligations. In other words, but for Qatar’s prior unlawful conduct, the Appellants would not have imposed such airspace restrictions.

1.28 The Appellants note that although Qatar – unsurprisingly – denies that it has committed internationally wrongful acts, it has not sought to refute the characterization of the dispute regarding airspace restrictions as arising from prior disputes wholly unrelated to civil aviation. Instead, in its Response to the Preliminary Objections of the Appellants to the competence of the ICAO Council (*ICAO Response to the Preliminary Objections*), Qatar repeatedly confirmed this understanding.

1.29 Qatar’s Memorial expressly admitted that the airspace restrictions resulted from “matters *unrelated* to air navigation and air transport.”<sup>34</sup> Its Response to the Appellants’ Preliminary Objections further stated that Qatar will provide “a robust defence” against allegations that it “supports terrorism, or

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<sup>31</sup> See below, paras 2.15, 2.37-2.39.

<sup>32</sup> See below, paras 2.48.

<sup>33</sup> See below, paras 2.4-2.7.

<sup>34</sup> **Vol. III, Annex 23**, ICAO Memorial, Sec. (g) (emphasis added).

terrorism financing etc”, and demonstrate that “the actions taken by the Respondents are not lawful countermeasures”<sup>35</sup>.

1.30 Qatar’s own assertions therefore, confirm that the *real issue* between the Parties relates to Qatar’s prior internationally wrongful acts, in regard to matters wholly unrelated to the Chicago Convention. Contrary to Qatar’s view, however, that dispute is manifestly beyond the competence of the ICAO Council insofar as the Council cannot adjudicate complex questions of law and fact that are manifestly beyond its narrow and specialized judicial functions under Article 84 of the Chicago Convention.

#### **Section 4. Novel character and significance of the question before the Court**

1.31 The issues of jurisdiction and admissibility raised by the Appellants’ second ground of appeal are novel and a matter of first impression, whether in the jurisprudence of the Court or of other international tribunals. In particular, the Appeal concerns the juxtaposition of the strictly limited jurisdiction of an organ of a United Nations specialized agency under a compromissory clause in a treaty (i.e., Article 84 of the Chicago Convention), with the taking of countermeasures in response to breaches of obligations that are manifestly outside the scope of that treaty.

1.32 The real issue, or true “disagreement” between the Parties in the present case is clearly not about the Chicago Convention as such. Rather, it relates to Qatar’s internationally wrongful acts in regard to the principle of non-intervention and with respect to terrorism and extremism, which resulted in the 5 June 2017 declarations; and, consequently, to the lawfulness of the adoption

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<sup>35</sup> Vol. IV, Annex 25, ICAO Response to the Preliminary Objections, para. 77.

of countermeasures by the Appellants to induce Qatar's compliance with those obligations.

1.33 The context, object and purpose of the Chicago Convention makes clear that even when exercising its judicial function under Article 84, the ICAO Council, composed as it is of State representatives and not legal experts appointed *intuitu personae*, was not intended to adjudicate the interpretation or application of other treaties or principles of customary law that are wholly unrelated to civil aviation. Such an impermissible expansion of the ICAO Council's jurisdiction would politicise and undermine the functioning of United Nations specialized agencies, the effectiveness of which depends on adhering to specific technical competences in their respective fields of specialization.

1.34 Unlike the present case, in previous cases involving countermeasures, the Court or other tribunal undoubtedly had jurisdiction over the entirety of the dispute, including both the lawfulness of the non-performance of obligations said to have been adopted by way of countermeasures, and the preceding allegedly internationally wrongful act relied upon as the justification for adoption of those countermeasures. The question of jurisdiction over the issues relating to the validity of countermeasures was thus not in issue.

1.35 *First*, in some previous cases, the Court either had general jurisdiction based on optional clause declarations made under Article 36, paragraph 2 of the Statute (for example, the decision of the Court in *Military and Paramilitary Activities*)<sup>36</sup>; or based on a *compromis* which was sufficiently broad in scope so as to confer jurisdiction in relation to all issues relating to the lawfulness of the

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<sup>36</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) Merits, Judgment, I.C.J. Reports 1986, p. 14.*

countermeasures, including the alleged prior internationally wrongful conduct (for example, the decision of the Court in *Gabčíkovo-Nagymaros Project*)<sup>37</sup>.

1.36 *Second*, in other cases, the alleged countermeasures consisted of the suspension of treaty obligations purportedly in response to an alleged breach of the same treaty (so-called “reciprocal countermeasures”). As a result, questions as to whether there was a prior internationally wrongful act were undoubtedly within the jurisdiction of the Court or tribunal. This was the case in the *Air Services* case<sup>38</sup>, the *Gabčíkovo-Nagymaros Project*, and the *Application of the Interim Accord* cases<sup>39</sup>.

1.37 In some of these cases, both factors – namely, general jurisdiction and reciprocal countermeasures under the same treaty – were present.

1.38 By contrast, in the present case, the issues as to the competence of the ICAO Council, which arise from the specific and novel characteristics of the dispute between the Parties, are as follows:

(a) on the one hand, Qatar has brought its claims as to the alleged non-performance by the Appellants of their obligations under the Chicago Convention pursuant to Article 84, a jurisdictional clause which, as discussed in Chapter V, is expressly circumscribed *ratione materiae*, and which in any case, in light of the specific role of ICAO, is to be interpreted narrowly;

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<sup>37</sup> *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7. For the text of Article 2 of the Special Agreement, see *ibid.*, p. 11, para. 2.

<sup>38</sup> *Case concerning Air Service Agreement of 27 March 1946 between the United States of America and France*, Decision, 9 December 1978, RIAA, Vol. XVIII, p. 417.

<sup>39</sup> *Application of the Interim Accord of 13 September 1995 (The former Yugoslav Republic of Macedonia v. Greece)*, Judgment, I.C.J. Reports 2011, p. 644.

(b) on the other hand, the Appellants' defence to those claims that any non-compliance with their obligations may be justified on the basis of customary international law as lawful countermeasures, adopted in response to internationally wrongful acts clearly arising outside the Chicago Convention, is manifestly outside the scope of Article 84.

1.39 In such circumstances, the Court cannot simply disregard the manifest lack of jurisdiction of the ICAO Council over essential elements in the dispute – notably the manifest lack of jurisdiction *ratione materiae* over the Appellants' claims of Qatar's internationally wrongful conduct in violation of its obligations in respect of the principle of non-intervention, and suppression of terrorism and extremism – that are wholly unrelated to the Chicago Convention, but which constitute the basis for the adoption of countermeasures by the Appellants, including *inter alia*, the airspace restrictions at issue.

## **Section 5. Outline of the Memorial**

1.40 This Memorial consists of five chapters in addition to the present introductory chapter. In addition, the Appellants' Memorial is accompanied by six volumes of supporting documents.

1.41 Chapter II sets out the factual background of the dispute between the Parties that led to Qatar's initiation of proceedings before the ICAO Council on 30 October 2017. This includes the conclusion of the Riyadh Agreements by which Qatar specifically undertook, *inter alia*, not to interfere in the domestic affairs of other States and not to support the activities of extremists or terrorist groups that threaten the security and stability of the region. It was Qatar's continuing violations of its obligations under the Riyadh Agreements and its other fundamental obligations under international law – including through continued interference in the internal affairs of the Appellants and continued

support for terrorist and extremist groups – that resulted in the severance of diplomatic relations on 5 June 2017, and the adoption of countermeasures by the Appellants, including the airspace restrictions that form the basis of Qatar’s claims before the ICAO Council.

1.42 Chapter III sets out the procedural history of the ICAO Council proceedings and the manifest violations of due process in the procedure, resulting in the ICAO Council Decision rejecting the Appellants’ Preliminary Objections – which, notably, was arrived at by secret vote and without any written opinion or other explanation whatsoever as to the legal reasoning for the decisions adopted, notwithstanding the obligation of the ICAO Council under Article 84 to act in a judicial capacity and the requirement under the ICAO Rules to give reasons for its decisions<sup>40</sup>. As a consequence of the manifest defects in the procedure adopted by the ICAO Council, the Decision in respect of the ICAO Application is null and void.

1.43 Chapter IV addresses a discrete preliminary issue as to the competence of the ICAO Council to consider objections to admissibility as a preliminary matter, and discusses the distinction between admissibility and jurisdiction as it applies in the context of the ICAO Council.

1.44 Chapter V then sets out the arguments regarding the ICAO Council’s manifest lack of competence over the issues relating to Qatar’s internationally wrongful acts and the corresponding countermeasures by the Appellants, including the airspace restrictions. In rejecting this first Preliminary Objection, whether as a matter of jurisdiction or admissibility, and notwithstanding the

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<sup>40</sup> **Vol. II, Annex 6**, ICAO Rules, Art. 15(2)(v).

absence of any reasons setting out the grounds for the Decision in this regard, the ICAO Council erred in fact and in law.

1.45 Chapter VI sets out the arguments regarding Qatar's failure to satisfy the procedural precondition of negotiations prior to initiating legal proceedings before the ICAO Council under Article 84, and its failure to comply with the parallel procedural requirements under the ICAO Rules. In rejecting the Appellants' second Preliminary Objection on this basis, and notwithstanding the absence of any reasons setting out the grounds for the Decision in this regard, the ICAO Council likewise erred in fact and in law.

1.46 The Memorial concludes in Chapter VII with a summary of the Appellants' arguments, followed by the Appellants' Submissions.

## CHAPTER II THE REAL DISPUTE BETWEEN THE APPELLANTS AND QATAR

### Section 1. Introduction

2.1 This Chapter sets out the factual background of the dispute between the Parties that resulted in the Appellants' termination of diplomatic relations with Qatar on 5 June 2017 and the adoption of a series of measures related to terrestrial, maritime and aerial links with Qatar, which are intended to induce Qatar to comply with its obligations under international law and to ensure the security of the region. These measures include restrictions against Qatar-registered civil aviation flights over the Appellants' territorial airspace.

2.2 As Qatar recognized in its Memorial submitted to the ICAO Council on 30 October 2017, the alleged breaches of the Chicago Convention by the Appellants are inextricably linked to what Qatar describes as an "ultimatum" "*on matters unrelated to air navigation and air transport.*"<sup>41</sup> The general overview in this Chapter sets out the circumstances which confirm the conclusion that the dispute is indeed unrelated to air navigation and transport. The Chapter merely aims to describe the context within which the dispute between the Parties has arisen, including the present Appeal in respect of the Decision of the ICAO Council. It is not intended to constitute a pleading on the merits in relation to Qatar's internationally wrongful acts that have occasioned the adoption of the Appellants' measures. Such matters, in any event, fall beyond the competence of the ICAO Council, and by extension the Court's appellate jurisdiction, under Article 84 of the Chicago Convention.

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<sup>41</sup> Vol. III, Annex 23, ICAO Memorial, para. (g) (emphasis added).

2.3 Turning to the particular measures complained of by Qatar in the present matter, the Appellants adopted airspace restrictions in respect of Qatar on 5 June 2017. On that date, each of the four Appellants issued official statements clearly explaining the reasons for the adoption of these measures against Qatar, a fellow member of the Arab League and (in respect of Bahrain, Saudi Arabia and the UAE) the GCC.

2.4 Bahrain declared:

“Based on the insistence of the State of Qatar on continuing to destabilize the security and stability of the Kingdom of Bahrain, to interfere in its affairs, to finance groups associated with Iran and to subvert and spread chaos in Bahrain in flagrant violation of all agreements and principles of international law without regard to values, law, morals, consideration of the principles of good neighbourliness or commitment to the constants of Gulf relations, shunning all previous pledges. The Kingdom of Bahrain announces the severance of diplomatic relations with the State of Qatar to preserve its national security as well as the withdrawal of the Bahraini diplomatic mission from Doha . . . and the closure of airspace . . . within 24 hours of the announcement of the statement. These dangerous Qatari practices have not only been limited to the Kingdom of Bahrain but have reached sister countries . . . [they] embody a very dangerous pattern that can not be met with silence or accepted, but which must be vigorously and resolutely addressed.”<sup>42</sup>

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<sup>42</sup> **Vol. III, Annex 24**, ICAO Preliminary Objections, para. 55, Exhibit 7, Declaration of the Kingdom of Bahrain, 5 June 2017 (alternative translation); **Vol. V, Annex 73**, Kingdom of Bahrain Ministry Foreign Affairs News Details, “Statement of the Kingdom of Bahrain on the severance of diplomatic relations with the State of Qatar”, 5 June 2017.

## 2.5 Egypt declared:

“The Egyptian government decided to cease all diplomatic relations with the State of Qatar. That came due to the insistence of the Qatari regime on adopting a hostile approach to Egypt, and the failure of all trials to deter its support to the terrorist organizations, topped by the terrorist group of the Muslim Brotherhood. The Qatari regime sheltered its leaders, who have received judicial rulings in terrorist operations targeted the safety and security of Egypt, in addition to promoting the doctrine of Al-Qaeda and ISIL, as well as supporting the terrorist operations in Sinai. Qatar has been insisting on interfering in the internal affairs of Egypt and the countries of the region, in a way that threatens the Arab national security and boosts the feelings of schism and fission inside the Arab communities, according to well-planned schemes targeting the unity of the Arab nation and its interests.”<sup>43</sup>

## 2.6 Saudi Arabia declared:

“KSA took this decisive decision due to the grave violations practiced by the authorities of Doha, in public and in secret, for the last year, aiming at creating a fission in the internal unity of Saudi and instigating to defy state authority, violate its sovereignty, and fostering several terrorist and sectarian groups which aim at destabilizing the region. Qatar sponsors Muslim Brotherhood, ISIL and Al-Qaeda groups, promotes their literature and schemes constantly in its media. It also supports the terrorism groups supported by Iran in Al Qatif governorate in KSA and the Kingdom of Bahrain. It funds, fosters and shelters the terrorists who aim at destabilizing and disuniting the country inside and

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<sup>43</sup> **Vol. III, Annex 24**, ICAO Preliminary Objections, Exhibit 6, Declaration of the Arab Republic of Egypt, 4 June 2017.

out. It uses media that pursues inciting the internal schism as it was clarified to KSA that Doha supports and backs the coup Houthi militia, even after the announcement of a coalition supporting legitimacy in Yemen.”<sup>44</sup>

2.7 The Ministry of Foreign Affairs of the UAE issued a statement declaring that measures, including the airspace restrictions, were being taken “based on the insistence of the State of Qatar to continue to undermine the security and stability of the region and its failure to honour international commitments and agreements”<sup>45</sup>. The statement further explained:

“The UAE is taking these decisive measures as a result of the Qatari authorities’ failure to abide by the Riyadh Agreement on returning GCC diplomats to Doha and its Complementary Arrangement in 2014, and Qatar’s continued support, funding and hosting of terror groups, primarily Islamic Brotherhood, and its sustained endeavours to promote the ideologies of Daesh and Al-Qaeda across its direct and indirect media in addition to Qatar’s violation of the statement issued at the US-Islamic Summit in Riyadh on May 21st, 2017 on countering terrorism in the region and considering Iran a state sponsor of terrorism. The UAE measures are taken as well based on Qatari authorities’ hosting of terrorist elements and meddling in the affairs of other countries as well as their support of terror groups – policies which are likely to push the region into a stage of unpredictable consequences.”<sup>46</sup>

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<sup>44</sup> **Vol. III, Annex 24**, ICAO Preliminary Objections, Exhibit 8, Declaration of Kingdom of Saudi Arabia. 5 June 2017.

<sup>45</sup> **Vol. III, Annex 24**, ICAO Preliminary Objections, Exhibit 9, Declaration of the United Arab Emirates, 5 June 2017.

<sup>46</sup> *Ibid.*

2.8 These four statements, couched in similar terms, record Bahrain, Egypt, Saudi Arabia and the UAE's considered assessments of Qatar's numerous and ongoing violations of international legal obligations. They reflect that over an extended period of time, Qatar has failed to suppress the activities of terrorists and extremists living within its borders and has failed to prosecute such terrorists and extremists; has systematically interfered in the internal affairs of the Appellants and other States; and has used its State-owned and -controlled media – in particular the *Al Jazeera* network – to incite hatred and violence<sup>47</sup>. The Appellants repeatedly put Qatar on notice that there would

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See also 2017 and 2018 statements at the United Nations General Assembly:

Bahrain: **Vol. V, Annex 80**, United Nations, Statement by H.E. Shaikh Khalid Bin Ahmed Bin Mohamed Al Khalifa, Minister of Foreign Affairs of the Kingdom of Bahrain, before the General Assembly, 72nd session, 20th Plenary Meeting, 23 September 2017, document A/72/PV.20, p. 13; **Vol. V, Annex 83**, United Nations, Statement by H.E. Shaikh Khalid Bin Ahmed Bin Mohamed Al Khalifa, Minister of Foreign Affairs of the Kingdom of Bahrain, before the 73rd Session of the United Nations General Assembly, 29 September 2018.

Egypt: **Vol. V, Annex 78**, Statement of Reply of Mohamed El Shinawy, the Minister Plenipotentiary of the Permanent Mission of Egypt to the General Assembly, 22 September 2017; **Vol. V, Annex 79**, United Nations, 72nd session, 18th Plenary Meeting, document A/72/PV.18, 22 September 2017, p. 33.

UAE: **Vol. V, Annex 79**, United Nations, Statement by His Highness Sheikh Abdullah Bin Zayed Al Nahyan, Minister of Foreign Affairs and International Cooperation of the United Arab Emirates before the General Assembly, 72nd session, 18th Plenary Meeting, document A/72/PV.18, 22 September 2017, p. 16; **Vol. V, Annex 84**, United Arab Emirates Ministry of Foreign Affairs & International Cooperation, *UAE Calls for Comprehensive Approach to Address Different Dimensions of Regional Threats*, 30 September 2018.

Saudi Arabia: **Vol. V, Annex 81**, United Nations, Statement of H.E. Adel Ahmed Al-Jubeir, Minister of Foreign Affairs of the Kingdom of Saudi Arabia before the General Assembly, 72nd session, 20th Plenary Meeting, document A/72/PV.20, 23 September 2017, p. 1; **Vol. V, Annex 82**, United Nations, Statement of H.E. Adel Ahmed Al-Jubeir, Minister of Foreign Affairs of the Kingdom of Saudi Arabia before the General Assembly, 73rd session, 28 September 2018.

inevitably be consequences if it did not cease its wrongful conduct<sup>48</sup>. But Qatar persisted in its wrongful conduct, notwithstanding its obligations under international law, including the specific undertakings in the Riyadh Agreements<sup>49</sup>.

2.9 In response, the Appellants severed diplomatic relations with Qatar and adopted countermeasures, including the airspace restrictions, in an attempt to induce Qatar to cease its wrongful conduct and comply with its obligations. Instead of putting an end to its wrongful conduct, Qatar initiated (*inter alia*) the proceedings before the ICAO Council that are at issue in this Appeal. In doing so, Qatar ignores the real dispute between the Parties, namely its own prior and continuing internationally wrongful acts that resulted in the Appellants' adoption of various measures, including the airspace restrictions.

## **Section 2. Qatar's failure to confront terrorism and extremism prior to the Riyadh Agreements**

2.10 Qatar has a long history of supporting extremist and terrorist groups in the Middle East and North Africa (*MENA*). These groups have been responsible for the intentional killing, maiming, enslavement, and forced displacement of countless innocent civilians, for extensive destruction of property (including cultural property) and infrastructure, and for political instability and armed conflict.

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<sup>48</sup> See, e.g., **Vol. V, Annex 64**, Fourth Report of the Follow-up Committee on the Implementation of the Riyadh Agreement Mechanism, 15 July 2014; **Vol. V, Annex 59**, Statement of the Arab Republic of Egypt Ministry of Foreign Affairs, "The Egyptian Ministry of Foreign Affairs summons the Qatari Ambassador to Cairo", 4 January 2014.

<sup>49</sup> **Vol. II, Annexes 19-21**, Riyadh Agreements.

2.11 Qatar has supported and sheltered high-profile members of Al-Qaida, including the notorious figure Khalid Shaikh Mohammed. Qatar’s Minister of Religious Endowments and Islamic Affairs, Sheik Abdullah bin Khalid al-Thani, reportedly helped Khalid Shaikh Mohammed evade a January 1996 arrest warrant issued by the United States for his terrorist activities relating to the 1993 World Trade Center bombing and a plot in 1995 to destroy several American airlines departing the Philippines<sup>50</sup>. Another example is Qatar’s provision of safe haven to Al-Qaida-affiliated terrorist Zelimkhan Yandarbiyev, who was designated as such by the United Nations Security Council Al-Qaida Sanctions Committee<sup>51</sup>, wanted under a 2001 Interpol Red Notice, and subject to a Russian extradition request. A report of the International Monetary Fund concluded that it is “clear that from the moment of the designation by the United Nations Security Council 1267 Committee in June 2003, until the individual’s death in February 2004, the [Qatari] authorities provided him with safe harbor and acted in violation of UNSC Resolution 1267.”<sup>52</sup>

2.12 Qatar’s support of terrorism and extremism extended well beyond Al-Qaida. In 2014, United States Under Secretary for Terrorism and Financial Intelligence, David Cohen, described Qatar as a “permissive jurisdiction” for

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<sup>50</sup> **Vol. VI, Annex 100**, “Threats and Responses: Counterterrorism; Qaeda Aide Slipped Away Long Before Sept. 11 Attack”, *The New York Times*, 8 March 2003. Upon returning to Afghanistan, he began to work with Osama bin Laden, allegedly assisting with the financing and planning of several terrorist attacks including the 9/11 World Trade Center attack and the 2002 Bali Bombings. *Ibid.*

<sup>51</sup> **Vol. VI, Annex 89**, United Nations Press Release SC/7803, Security Council Committee Adds Names of 17 Individuals to Al-Qaida Section of Consolidated List, 26 June 2003.

<sup>52</sup> **Vol. VII, Annex 130**, International Monetary Fund, *Qatar: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, 19 June 2018, published October 2008, pp. 46-47; **Vol. VI, Annex 87**, United Nations, Resolution 1267 (1999) adopted by the Security Council at its 4051st meeting on 15 October 1999, document S/RES/1267.

terrorist financing generally, and stated specifically that Qatar “has for many years openly financed Hamas, a group that continues to undermine regional stability.”<sup>53</sup>

2.13 In the period between 2011 and 2013, the threats posed by extremist groups reached a critical point in the MENA region. Those threats became especially aggravated in 2013 when, *inter alia*, there were widespread uprisings against the Muslim Brotherhood in Egypt, Islamic State (*ISIL (Da’esh)*) began its rise to prominence after seizing Raqqa in Syria, and sectarian tensions in Yemen began to escalate.

2.14 It was in this context that groups like Al-Qaida, Hamas, and the Muslim Brotherhood came to perform a central role in fuelling regional violence and upheaval. Qatar was pivotal in supporting the rise of these groups, including the Muslim Brotherhood, a matter of particular concern to Egypt<sup>54</sup>. Qatar allowed Muslim Brotherhood leadership figures to operate freely in Qatar, and the state-owned and -controlled media network *Al Jazeera* served as a platform for the group to propound its calls for extremism and violence, including especially against the Egyptian Government that emerged following the popular revolution against President Morsi’s Muslim Brotherhood

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<sup>53</sup> **Vol. III, Annex 24**, ICAO Preliminary Objections, Exhibit 19, Remarks of Under Secretary for Terrorism and Financial Intelligence David Cohen before the Center for a New American Security on “Confronting New Threats in Terrorist Financing”, 4 March 2014.

<sup>54</sup> **Vol. III, Annex 24**, ICAO Preliminary Objections, Exhibit 19, Remarks of Under Secretary for Terrorism and Financial Intelligence David Cohen before the Center for a New American Security on “Confronting New Threats in Terrorist Financing”, 4 March 2014; **Vol. VI, Annex 106**, E. Dickinson, “How Qatar Lost the Middle East”, *Foreign Policy*, 5 March 2014.

Government in 2013<sup>55</sup>. Following these events, Egypt, the UAE and Saudi Arabia officially designated the Muslim Brotherhood as a terrorist organization<sup>56</sup>.

2.15 Qatar also refused to take action to suppress the terrorism-related activities of, or to prosecute, internationally designated terrorists based in Qatar. These individuals included Khalifa Muhammad Turki Al-Subaiy, whom the United Nations Security Council ISIL (Da'esh) and Al-Qaida Sanctions Committee describes as “a Qatar-based terrorist financier and facilitator who has provided financial support to, and acted on behalf of, the senior leadership of Al-Qaida”<sup>57</sup>. In 2012, while living freely in Qatar, Al-Subaiy worked with Al-Qaida associates also based in Qatar to transfer significant sums of money to

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<sup>55</sup> **Vol. VI, Annex 103**, “Muslim Brotherhood Opponents and Al-Jazeera Employees Protest: The Channel Is Biased and Unprofessional”, *Middle East Media Research Institute*, 12 July 2013.

<sup>56</sup> See **Vol. V, Annex 58**, Note Verbale of 1 January 2014 from the Embassy of the Arab Republic of Egypt in Doha to the Ministry of Foreign Affairs of the State of Qatar; **Vol. V, Annex 61**, Note Verbale of 3 March 2014 from the Embassy of the Arab Republic of Egypt in Doha to the Ministry of Foreign Affairs of the State of Qatar, communicating to Qatar that the Muslim Brotherhood had been so designated by Egypt on 25 December 2013; **Vol. V, Annex 63**, Press Release issued by the Minister of Interior of the Kingdom of Saudi Arabia, “Injunctions on Security and Ideology for Citizens and Residents; and An Extra Grace Period of 15 Days for Those Taking Arms outside the Kingdom to Rethink Their Position and Return Home [to] Riyadh”, 7 March 2014; **Vol. VI, Annex 107**, “UAE Cabinet Approves List of Designated Terrorist Organisations, Groups”, *Emirates News Agency*, 16 November 2014; **Vol. VII, Annex 134**, United Arab Emirates, Cabinet Decree of Terrorist Organizations of 15 November 2014 pursuant to Federal Law No. 7 of 2014 on Combating Terrorism Offences, adopted on 31 August 2014. See also **Vol. V, Annex 77**, Kingdom of Bahrain Ministry of Foreign Affairs, “Minister of Foreign Affairs: Our next decisions regarding Qatar will be timely and thoroughly studied from all aspects”, 5 July 2017.

<sup>57</sup> **Vol. III, Annex 24**, ICAO Preliminary Objections, Exhibit 15, Narrative Summary: QDi.253 Khalifa Muhammad Turki Al-Subaiy, United Nations Sanctions List issued by the Security Council Commission pursuant to Security Council Resolutions 1267 (1999) 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh) Al-Qaida and Associated Individuals Groups Undertakings and Entities, last updated on 3 February 2016.

Al-Qaida and its senior leaders based in Pakistan<sup>58</sup>. Similarly, Qatar failed to prosecute Abd Al-Rahman Al-Nu’aymi, a United Nations-designated terrorist associated with Al-Qaida who participated in the ““financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of’ and ‘otherwise supporting acts or activities of’” Al-Qaida in Iraq<sup>59</sup>. That activity included transferring nearly US\$600,000 to Al-Qaida representatives in Syria in 2013<sup>60</sup>.

2.16 The violence and upheaval from which the region was suffering, and in which Qatar was centrally involved, demanded a collective regional response. That was the purpose of the Riyadh Agreements, legal instruments of salient significance.

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<sup>58</sup> **Vol. VII, Annex 135**, United States Department of Treasury Press Release, “Treasury Designates Twelve Foreign Terrorist Fighter Facilitators”, 24 September 2014.

<sup>59</sup> **Vol. III, Annex 24**, ICAO Preliminary Objections, Exhibit 16, Narrative Summary: QDi.334 ‘Abd al-Rahman bin ‘Umayr al-Nu’aymi, United Nations sanctions list issued by the Security Council Committee pursuant to Security Council Resolutions 1267 (1999) 1989 (2011) and 2253 (2015) concerning ISIL (Da’esh) Al-Qaida and Associated Individuals Groups Undertakings and Entities, last updated 13 May 2016; see also **Vol. VII, Annex 133**, United States Department of Treasury Press Release, “Treasury Designates Al-Qa’ida Supporters in Qatar and Yemen”, 18 December 2013.

<sup>60</sup> **Vol. III, Annex 24**, ICAO Preliminary Objections, Exhibit 16, Narrative Summary: QDi.334 ‘Abd al-Rahman bin ‘Umayr al-Nu’aymi, United Nations sanctions list issued by the Security Council Commission pursuant to Security Council Resolutions 1267 (1999) 1989 (2011) and 2253 (2015) concerning ISIL (Da’esh) Al-Qaida and Associated Individuals Groups Undertakings and Entities, last updated 13 May 2016. According to the UN, Al-Nu’aymi “has facilitated significant financial support to Al-Qaida in Iraq (AQI) (QDe.115), and served as an interlocutor between AQI leaders and Qatar-based donors”. *Ibid.* He has also been designated as a terrorist and subjected to sanctions by the Appellants. **Vol. V, Annex 74**, Kingdom of Bahrain Ministry Foreign Affairs, “Statement by the Kingdom of Saudi Arabia, the Arab Republic of Egypt, the United Arab Emirates, and the Kingdom of Bahrain”, 9 June 2017.

### Section 3. The Riyadh Agreements

2.17 The GCC was founded in 1981 to bring “cooperation and coordination” between its members – owing to their “special relations”, “joint characteristics”, “joint creed”, “similarity of regimes”, and “unity of heritage” – “within the framework of the Arab League Charter, which urges regional cooperation” to work “in a manner that serves the Arab and Islamic issues”<sup>61</sup>. The GCC’s programme to “realize cooperation and coordination” in the field of regional security has been ongoing since at least July 1975, i.e., six years before the GCC’s founding, and was manifested in the 2013-2014 period in a series of agreements known collectively as the Riyadh Agreements<sup>62</sup>.

2.18 On 23 November 2013, Qatar, the State of Kuwait (*Kuwait*), and Saudi Arabia signed the First Riyadh Agreement. On 24 November 2013, the UAE, Bahrain and the Sultanate of Oman (*Oman*) signed an instrument acceding to it<sup>63</sup>. This Agreement imposed obligations on all six of the GCC countries, including Qatar. As noted in its Preamble, the Heads of State “held extensive

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<sup>61</sup> Foreign Minister of Saudi Arabia, Saud al-Faisal’s Statement on the Founding of the GCC (Riyadh Communique), 4 February 1981. See also Statement of Prime Minister and Crown Prince of Kuwait, Shaykh Jabir al-Ahmad al-Sabah, May 1976, who called for “the establishment of a Gulf Union with the object of realizing cooperation in all economic, political, educational and informational fields . . . to serve the interests and stability of the peoples of the region”; and GCC Secretary, General Abdallah Yaqub Bisharah’s Press Conference, 27 May 1981: “We constitute an important power in the major course of Arab policy and believe that our council both strengthens and bolsters the Arab League.” All collected in: **Vol. V, Annex 57**, R. K. Ramazani, *The Gulf Cooperation Council: Record and Analysis* (Virginia, 1988), pp. 1, 3, 12-13, 31-32; see also **Vol. II, Annex 8**, Charter of the Co-operation Council for the Arab States of the Gulf, concluded at Abu Dhabi on 25 May 1981, 1288 *UNTS* 151, Preamble.

<sup>62</sup> See also **Vol. II, Annex 16**, Security Agreement Between the States of the Gulf Cooperation Council, signed at Riyadh on 13 November 2012.

<sup>63</sup> See **Vol. II, Annex 19**, First Riyadh Agreement, 23 and 24 November 2013, Accession of the Kingdom of Bahrain and the United Arab Emirates to the Riyadh Agreement, 24 November 2013.

deliberations in which they conducted a full revision of what taints the relations between the [Gulf Cooperation] Council states, the challenges facing [the GCC's] security and stability, and [the] means to abolish whatever muddies the relations”<sup>64</sup>. This unprecedented multilateral agreement laid the foundation “for a new phase of collective work” that would operate “within a unified political framework based on the principles included in the main system of the Cooperation Council”<sup>65</sup>. Accordingly, by its express terms, the First Riyadh Agreement sets forth a unified approach to address the threats to regional security, stability and peace. Consistent with international law, the GCC “agreed upon” the following three undertakings<sup>66</sup>. First, an undertaking of “[n]o interference in the internal affairs of the [GCC] states”, which includes specific duties not to harbour or naturalize certain individuals, not to support certain groups and not to support certain media<sup>67</sup>. Second, an explicit undertaking to provide “[n]o support to the Muslim Brotherhood or any of the organizations, groups or individuals that threaten the security and stability of the [GCC] states through direct security work or through political influence.”<sup>68</sup> Third, an undertaking “[n]ot to present any support to any faction in Yemen that could pose a threat to countries neighboring Yemen.”<sup>69</sup>

2.19 Qatar, however, failed to comply with the obligations to which it had committed in the First Riyadh Agreement. It continued to act as a permissive jurisdiction for terrorist financing, persisted in its interference in the

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<sup>64</sup> **Vol. II, Annex 19**, First Riyadh Agreement, 23 and 24 November 2013, Preamble.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*, Art. 1.

<sup>68</sup> *Ibid.*, Art. 2 (emphasis added).

<sup>69</sup> *Ibid.*, Art. 3.

Appellants' internal affairs, and designated terrorists continued to live within its borders. Despite the express undertaking in the First Riyadh Agreement to refrain from supporting the Muslim Brotherhood, Qatar continued to embrace the organization, including by providing its leader Yusuf Al-Qaradawi with a platform for hate speech and incitement to violence on *Al Jazeera*. This was despite Al-Qaradawi's history of making inflammatory statements on *Al Jazeera*, such as praising Hitler's "divine punishment" of the Jews and also endorsing suicide bombings<sup>70</sup>. On 25 December 2013, shortly after the conclusion of the First Riyadh Agreement, Egypt declared the Muslim Brotherhood a terrorist group, and formally conveyed that decision to Qatar in a Note Verbale on 1 January 2014<sup>71</sup>. Subsequently, Saudi Arabia and the UAE also designated the Muslim Brotherhood as a terrorist organization<sup>72</sup>.

2.20 In response to Egypt's Note Verbale, on 3 January 2014, Qatar made hostile public statements condemning Egypt's designation of the Muslim

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<sup>70</sup> See **Vol. VI, Annex 101**, Video Excerpt of Yusuf Al-Qaradawi, *Al-Jazeera Television*, 28-30 January 2009; **Vol. VI, Annex 102**, Video Excerpt of Yusuf Al-Qaradawi, 'Sharia and Life', *Al-Jazeera Television*, 17 March 2013.

<sup>71</sup> **Vol. V, Annex 58**, Note Verbale of 1 January 2014 from the Embassy of the Arab Republic of Egypt in Doha to the Ministry of Foreign Affairs of the State of Qatar; **Vol. V, Annex 61**, Note Verbale of 3 March 2014 from the Embassy of the Arab Republic of Egypt in Doha to the State of Qatar. These documents communicated to Qatar that the Muslim Brotherhood had been designated as a terrorist organization by Egypt on 25 December 2013.

<sup>72</sup> See **Vol. V, Annex 63**, Press Release issued by the Minister of Interior of Saudi Arabia, "Injunctions on Security and Ideology for Citizens and Residents; and An Extra Grace Period of 15 Days for Those Taking Arms outside the Kingdom to Rethink Their Position and Return Home [to] Riyadh", 7 March 2014; **Vol. VI, Annex 107**, "UAE Cabinet Approves List of Designated Terrorist Organisations, Groups", *Emirates News Agency*, 16 November 2014; **Vol. VII, Annex 134**, United Arab Emirates, Cabinet Decree of Terrorist Organizations of 15 November 2014 pursuant to Federal Law No. 7 of 2014 on Combating Terrorism Offences, adopted on 31 August 2014. See also **Vol. V, Annex 77**, Kingdom of Bahrain Ministry of Foreign Affairs, "Minister of Foreign Affairs: Our Next Decisions Regarding Qatar Will Be Timely and Thoroughly Studied from All Aspects", 5 July 2017.

Brotherhood as a terrorist organization<sup>73</sup>. The following day, Egypt summoned Qatar's Ambassador in Cairo to protest that "the content of the Qatari statement is considered a gross interference in the domestic affairs of our country", warning that Qatar would bear "full responsibility"<sup>74</sup>. On 3 February 2014, following further provocations by Qatar, Egypt recalled its Ambassador from Qatar, and it subsequently notified Qatar on 13 July 2015 that he would not return<sup>75</sup>.

2.21 On 5 March 2014, Bahrain, Saudi Arabia, and the UAE also recalled their Ambassadors from Qatar. The joint statement issued by those three GCC States announced that their "efforts have not resulted, with great regret, in the consent of the State of Qatar to adhere to these procedures [under the Riyadh Agreement], so the three countries have to start taking whatever [action] they deem appropriate to protect their security and stability by withdrawing their ambassadors from the State of Qatar"<sup>76</sup>. The three States expressed their hope "that the State of Qatar takes immediate steps to respond to what had been agreed upon"<sup>77</sup>. The recalling of the Ambassadors was the first attempt by

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<sup>73</sup> **Vol. VI, Annex 104**, "Qatar criticizes Egypt's designation of the Muslim Brotherhood as a terrorist organization", *BBC Arabic*, 4 January 2014; see also **Vol. VI, Annex 105**, "Update 2 – Egypt summons Qatari envoy after criticisms of crackdown", *Reuters*, 4 January 2014.

<sup>74</sup> **Vol. V, Annex 59**, Statement of the Arab Republic of Egypt Ministry of Foreign Affairs, "The Egyptian Ministry of Foreign Affairs summons the Qatari Ambassador to Cairo", 4 January 2014.

<sup>75</sup> **Vol. V, Annex 60**, Note Verbale of 3 February 2014 from the Embassy of the Arab Republic of Egypt in Doha to the Ministry of Foreign Affairs of the State of Qatar; **Vol. V, Annex 70**, Note Verbale of 13 July 2015 from the Embassy of the Arab Republic of Egypt in Doha to the State of Qatar.

<sup>76</sup> **Vol. V, Annex 62**, Kingdom of Bahrain Ministry of Foreign Affairs News Details, "A Statement Issued by the Kingdom of Saudi Arabia, the United Arab Emirates and the Kingdom of Bahrain", 5 March 2014, p. 1.

<sup>77</sup> *Ibid*, p. 2.

Egypt, Bahrain, Saudi Arabia and the UAE to introduce measures to induce Qatar's compliance with its international obligations.

2.22 In an attempt to resolve the impasse, and recognising the importance of securing full implementation of the obligations in the First Riyadh Agreement, on 17 April 2014 the GCC Member States (Bahrain, Kuwait, Oman, Saudi Arabia, the UAE and Qatar) signed the Mechanism Implementing the Riyadh Agreement (*Implementing Mechanism*) as a complementary international treaty. The Implementing Mechanism recorded "the urgency of the matter that calls for taking the necessary executive procedures to enforce [the] content" of the First Riyadh Agreement and "set a mechanism that shall guarantee [its] implementation"<sup>78</sup>.

2.23 The Implementing Mechanism first provides that it is for "[t]he concerned party to monitor the implementation of the Agreement"<sup>79</sup>. In that context, the "[f]oreign ministers of the GCC Countries shall hold private meeting[s] [i]n the margins of annual periodic meetings of the ministerial council"<sup>80</sup>. At those meetings, "violations and complaints reported by any member country of the Council against any member country of the Council shall be reviewed by the foreign ministers to consider, and raise them to leaders."<sup>81</sup> The Implementing Mechanism goes on to state that the "[l]eaders of the GCC Countries . . . shall take the appropriate action towards what the

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<sup>78</sup> **Vol. II, Annex 20**, Implementing Mechanism, 17 April 2014, Preamble.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

Ministers of Foreign Affairs raise to them regarding any country that has not complied with the signed agreement by the GCC Countries.”<sup>82</sup>

2.24 The Implementing Mechanism then reaffirmed the obligations undertaken in the First Riyadh Agreement, and defined specific actions needed to fulfil those obligations. For example, the Implementing Mechanism sets forth detailed obligations that elaborate and expand on the original commitment to refrain from interfering in the internal affairs of other States, such as a commitment “[n]ot to shelter, accept, support, encourage or make its country an incubator to the activities of GCC citizens or other figures who are proven oppositionists to any country of [the] GCC”, and “[n]ot to fund or support external organizations, groups or parties, that have hostile positions and incitements against the GCC Countries.”<sup>83</sup> Again, the Implementing Mechanism includes an explicit commitment “[n]ot to support [the] Muslim Brotherhood with money or via media in the GCC Countries or outside” and to “[a]pprove the exit of Muslim Brotherhood figures, who are not citizens”<sup>84</sup>.

2.25 Notably, the final paragraph of the Implementing Mechanism provides that “if any country of the GCC [States] failed to comply with this mechanism, the other GCC [States] shall have the right to take *any appropriate action* to protect their security and stability.”<sup>85</sup>

2.26 In short, the Riyadh Agreements imposed collective obligations on every signatory. From the signing of the First Riyadh Agreement, each of the

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<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*, Arts 1(b) and 1(d).

<sup>84</sup> *Ibid.*, Art. 2(a)-(b).

<sup>85</sup> **Vol. II, Annex 20**, Implementing Mechanism, 17 April 2014, Art. 3 (emphasis added).

other GCC States, except Qatar, have taken steps to ensure they were in compliance with the specific undertakings contained in the Riyadh Agreements.

2.27 The other GCC States repeatedly called to Qatar's attention its failure to comply with its obligations. For example, at meetings of the Follow-up Committee set up pursuant to the Implementing Mechanism in June 2014, both Bahrain and the UAE called Qatar's attention to its continued support of certain banned individuals and organizations, including affiliates of Al-Qaida and the Muslim Brotherhood respectively<sup>86</sup>. In August 2014, Bahrain, the UAE, and Saudi Arabia reported that Qatar remained in non-compliance. This led to a meeting of the Ministers of Foreign Affairs on 30 August 2014, at which the question of how to respond to Qatar's non-compliance with the First Riyadh Agreement and its Implementing Mechanism was the central issue<sup>87</sup>. The Operations Room was established by State representatives, including those of Qatar, in order to monitor and report on the implementation of the Riyadh Agreements<sup>88</sup>.

2.28 In a parallel development, on 11 September 2014, Qatar joined the other GCC States and Egypt, Iraq, Jordan, Lebanon and the United States in issuing the Jeddah Communique in which these States agreed to counter the financing of ISIL (Da'esh) and other violent extremists, "repudiat[e] their hateful ideology", end impunity, and bring terrorists and extremists to justice<sup>89</sup>.

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<sup>86</sup> **Vol. V, Annex 64**, Fourth Report of the Follow-up Committee on the Implementation of the Riyadh Agreement Mechanism, 15 July 2014.

<sup>87</sup> **Vol. V, Annex 65**, Summary of Discussions in the Sixth Meeting of their Highnesses and Excellencies the Ministers of Foreign Affairs, Jeddah, 30 August 2014.

<sup>88</sup> *Ibid.*

<sup>89</sup> **Vol. V, Annex 66**, Jeddah Communique, 11 September 2014.

2.29 Nevertheless, Qatar did not take its obligations seriously and failed to engage in good faith with the Riyadh process. This non-compliance led to the conclusion of the Supplementary Riyadh Agreement on 16 November 2014 (*Supplementary Riyadh Agreement*)<sup>90</sup>.

2.30 The Supplementary Riyadh Agreement “stress[es] that non-committing to any of the articles of the [First] Riyadh Agreement and its [Implementing Mechanism] amounts to a violation of the entirety of them”<sup>91</sup>. It also underscored “the necessity of the full commitment to implementing everything stated in them within the period of one month from the date of the agreement.”<sup>92</sup> It specifically provides that the signatories “are committed to the Gulf Cooperation Council discourse to support the Arab Republic of Egypt, and contributing to its security, stability and its financial support; and ceasing all media activity directed against the Arab Republic of Egypt in all media platforms, whether directly or indirectly, including all offenses broadcasted on Al Jazeera, Al Jazeera Mubashir Masr, and to work to stop all offenses in Egyptian media.”<sup>93</sup> Thus, the Agreement recorded the parties’ intention to undertake specific obligations, and to recognize corresponding rights with regard to Egypt<sup>94</sup>.

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<sup>90</sup> **Vol. II, Annex 21**, Supplementary Riyadh Agreement, 16 November 2014, signed by Saudi Arabia, Kuwait, Bahrain, Qatar, and the UAE.

<sup>91</sup> *Ibid.*, Art. 3(a).

<sup>92</sup> *Ibid.*, Art. 3(b).

<sup>93</sup> *Ibid.*, Art. 3(d).

<sup>94</sup> See, e.g., Vienna Convention on the Law of Treaties, signed at Vienna on 23 May 1969, 1155 *UNTS* 331, Art. 36(1) (“A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.”).

2.31 The Supplementary Riyadh Agreement also obliged each State “[n]ot to give refuge, employ, or support whether directly or indirectly, whether domestically or abroad, to any person or a media apparatus that harbors inclinations harmful to any Gulf Cooperation Council [S]tate.”<sup>95</sup> It proceeded to note that “[e]very State is committed to taking all the regulatory, legal and judicial measures against anyone who [commits] any encroachment against Gulf Cooperation Council [S]tates, including putting him on trial and announcing it in the media.”<sup>96</sup>

2.32 Following Qatar’s pledges under the Supplementary Riyadh Agreement, Bahrain, Saudi Arabia, and the UAE immediately returned their Ambassadors to Qatar on 17 November 2014.

#### **Section 4. Qatar’s violations of the Riyadh Agreements and its other obligations under international law**

2.33 Qatar continued to disregard its clear and binding commitments in the Riyadh Agreements and its other obligations under international law. It continued to support and provide a platform for extremist groups and their members that threaten the security and stability of the Appellants.

##### **A. QATAR’S SUPPORT FOR THE MUSLIM BROTHERHOOD AND OTHER EXTREMIST GROUPS**

2.34 Qatar expressly undertook in the Riyadh Agreements not to support the Muslim Brotherhood or other extremist groups. However, it continued to do so. For example, Egypt requested the extradition from Qatar of the Muslim

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<sup>95</sup> Vol. II, Annex 21, Supplementary Riyadh Agreement, 16 November 2014, Art. 3(c).

<sup>96</sup> *Ibid.*

Brotherhood leader Al-Qaradawi in 2015, pursuant to an Interpol red notice<sup>97</sup>. But instead of being extradited or prosecuted, Al-Qaradawi has been supported by the highest levels of the Qatari leadership. The Appellants officially designated Al-Qaradawi as a terrorist in 2017<sup>98</sup>, yet, as recently as May 2018, he was photographed embracing Qatar's Head of State, Emir Tamim bin Hamad Al-Thani, at a banquet hosted by the Emir<sup>99</sup>.

2.35 The Muslim Brotherhood presence in Qatar has had grave consequences. For example, on 11 December 2016, a suicide-bomber killed and injured numerous Copt Christian worshippers at the Church of Saints Paul and Peter, attached to Saint Mark cathedral in Abbaseya, Egypt. A statement from the Egyptian Ministry of Interior indicated that the culprit, Mohaab Mustafa al-Sayid Qasim, had been radicalized after meeting with Muslim Brotherhood leaders in Qatar in 2015<sup>100</sup>.

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<sup>97</sup> **Vol. V, Annex 68**, Note Verbale from the Embassy of the Arab Republic of Egypt in Doha to the Ministry of Foreign Affairs of the State of Qatar, Extradition Request concerning Yusuf Abdullah Aly Al-Qaradawi, 21 February 2015.

<sup>98</sup> **Vol. V, Annex 74**, Kingdom of Bahrain Ministry Foreign Affairs News Details, "Statement by the Kingdom of Saudi Arabia, the Arab Republic of Egypt, the United Arab Emirates, and the Kingdom of Bahrain", 9 June 2017; **Vol. V, Annex 75**, "Report: General Details on the Individuals and the Bodies related to Al-Qaeda on the List of Terrorist Organizations", *Emirates News Agency*, 9 June 2017. See also **Vol. III, Annex 24**, ICAO Preliminary Objections, Exhibit 13, Letter from the Kingdom of Saudi Arabia, the Arab Republic of Egypt, the United Arab Emirates, and the Kingdom of Bahrain to the United Nations Secretary General, UN/SG/Qatar/257, 16 June 2017.

<sup>99</sup> **Vol. VI, Annex 118**, "Amir Hosts Iftar banquet for scholars, judges and imams", *Gulf Times*, 30 May 2018; **Vol. VI, Annex 119**, D. McElroy, "US Advisers Quit Qatar Role as Emir Dines with Muslim Brotherhood Leader", *The National*, 7 June 2018.

<sup>100</sup> **Vol. V, Annex 71**, Official Statement of the Ministry of Interior of the Arab Republic of Egypt, 12 December 2016, paras 3-4.

2.36 During the same period, Qatar also demonstrated its support for extremist groups in other contexts. For example, on 12 February 2015, ISIL (Da'esh) posted a video showing the beheading of 21 Egyptian Copt Christian migrant workers in Libya<sup>101</sup> in response to which Egypt conducted airstrikes against ISIL (Da'esh) targets in Libya<sup>102</sup>. On 18 February 2015, the Council of the Arab League strongly condemned “the heinous barbaric crime” committed by ISIL (Da'esh), expressed its “strong support” and “understanding” of Egypt’s airstrikes – conducted with the full cooperation and coordination of the “legitimate authorities in Libya” – in the exercise of its right to self-defence<sup>103</sup>. It called on the Arab States to suppress financing of terrorist organizations, and “to present all forms of support and solidarity to Egypt in its war against terrorism.”<sup>104</sup> Qatar was the sole member of the Arab League to express its reservations to this resolution, having condemned Egypt’s airstrikes against ISIL (Da'esh) in Libya<sup>105</sup>.

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<sup>101</sup> See **Vol. VI, Annex 108**, “Islamic State: Egyptian Christians held in Libya ‘killed’”, *BBC*, 15 February 2015; **Vol. VI, Annex 109**, T. Kamal, “Thousands Mourn Egyptian Victims of Islamic State in Disbelief”, *Reuters*, 16 February 2015.

<sup>102</sup> **Vol. VI, Annex 110**, J. Malsin and C. Stephen, “Egyptian Air Strikes in Libya Kill Dozens of Isis Militants”, *The Guardian*, 17 February 2015.

<sup>103</sup> **Vol. V, Annex 67**, Press Release of the Arab League, “Consultative Meeting of the Council of the League at the level of Permanent Representatives on the condemnation of the barbaric terrorist act which killed twenty-one Egyptian citizens by ISIS in Libya”, 18 February 2015, para. 2.

<sup>104</sup> *Ibid.*, para. 4.

<sup>105</sup> *Ibid.*, noting that Qatar reserved its position with respect to para.2; **Vol. V, Annex 69**, Letter of 10 March 2015 from the Arab League, attaching letter of 10 March 2015 from the State of Qatar to the Arab League, p. 2: “The representative would like to amend the Qatari reservation on the resolution issued by the council in this regard and to record the Qatari reservation on the entire resolution.”

## B. FAILURE TO EXTRADITE OR PROSECUTE TERRORISTS

2.37 The Riyadh Agreements contain express obligations not to shelter and provide support to individuals and groups engaged in terrorist activities or conducting subversive activities against other States<sup>106</sup>. Qatar is also a party to a number of additional international instruments that oblige Qatar to identify and prosecute or extradite terrorists and funders of terrorism, including: (i) the Arab Convention on the Suppression of Terrorism<sup>107</sup>; (ii) the GCC Anti-Terrorism Agreement<sup>108</sup>; (iii) the Convention of the Organization of the Islamic Conference on Combating International Terrorism<sup>109</sup>; (iv) the International Convention for the Suppression of the Financing of Terrorism<sup>110</sup>; and (v) the

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<sup>106</sup> **Vol. II, Annex 19**, First Riyadh Agreement, 23 and 24 November 2013, Art. 2; **Vol. II, Annex 20**, Implementing Mechanism, 17 April 2014, Arts 1(b) and 1(d); **Vol. II, Annex 21**, Supplementary Riyadh Agreement, 16 November 2014, Art. 3.

<sup>107</sup> Under the Arab Convention on the Suppression of Terrorism, Qatar is unequivocally required to prevent terrorists from entering and using its territory as a “base for planning, organising, executing, attempting or taking part in terrorist crime and to prosecute or extradite any such individuals”. **Vol. II, Annex 10**, League of Arab States, Arab Convention on the Suppression of Terrorism, adopted at Cairo on 22 April 1998, Arts 3, 4.II and 5.

<sup>108</sup> **Vol. II, Annex 14**, GCC Anti-Terrorism Agreement, signed at Kuwait City on 4 May 2004, Art. 19. Pursuant to the GCC Anti-Terrorism Agreement, in addition to being under obligations to prevent the entrance or infiltration of terrorists into its territory, Qatar has an obligation to take steps to prevent its citizens from being induced to join illegal groups or to participate in terrorist activities. *Ibid.*, Art. 6.

<sup>109</sup> **Vol. II, Annex 11**, Convention of the Organization of the Islamic Conference on Combating International Terrorism, adopted at Ouagadougou on 1 July 1999, Art. 3.II(a), pursuant to which Qatar has committed to prevent its territory “from being used as an arena for planning, organizing, executing terrorist crimes or initiating or participating in these crimes in any form; including preventing the infiltration of terrorist elements or their gaining refuge or residence therein individually or collectively”.

<sup>110</sup> **Vol. II, Annex 12**, International Convention for the Suppression of the Financing of Terrorism, signed at New York on 9 December 1999, 2178 *UNTS* 197 (*ICSFT*), Arts 2, 7, 9, 10 and 18.

Security Agreement Between the States of the GCC<sup>111</sup>. Qatar is also bound by counter-terrorism obligations arising under United Nations Security Council Resolutions adopted under Chapter VII of the United Nations Charter – in particular, Security Council Resolution 1373 (2001), which obliges all Member States: (i) to deny safe haven to those who finance, plan, support, or commit terrorist acts; (ii) to prevent the movement of terrorists or terrorist groups through the implementation of effective border controls; (iii) to ensure that any person who participates in the financing, planning, or perpetration of terrorist acts is brought to justice; and (iv) to prevent, suppress, and criminalize terror financing<sup>112</sup>.

2.38 Rather than complying with its international obligations, Qatar has provided a safe haven for individuals residing in its territory to plan terrorist activities and disseminate hate speech in violation of international law without facing any consequences<sup>113</sup>. For example, in December 2016, Al-Nu’aymi used

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<sup>111</sup> **Vol. II, Annex 16**, Security Agreement Between the States of the Gulf Cooperation Council, signed at Riyadh on 13 November 2012, Arts 2, 3 and 16.

<sup>112</sup> **Vol. VI, Annex 88**, United Nations, Resolution 1373 (2001) adopted by the Security Council at its 4385th meeting, document S/RES/1373, 28 September 2001, para. 2(c), (d), (e) and (g); **Vol. VI, Annex 90**, United Nations, Resolution 1624 (2005), adopted by the Security Council at its 5261st meeting, document S/RES/1624, 14 September 2005. See also **Vol. VI, Annex 92**, United Nations, Resolution 2133 (2014) adopted by the Security Council at its 7101st meeting, document S/RES/2133, 27 January 2014; **Vol. VI, Annex 93**, United Nations, Resolution 2178 (2014), adopted by the Security Council at its 7272nd meeting, document S/RES/2178, 24 September 2014; **Vol. VI, Annex 98**, United Nations, Resolution 2396 (2017), adopted by the Security Council at its 8148th meeting document S/RES/2396, 21 December 2017.

<sup>113</sup> See **Vol. V, Annex 80**, United Nations, Statement by H.E. Shaikh Khalid Bin Ahmed Bin Mohamed Al Khalifa, Minister of Foreign Affairs of the Kingdom of Bahrain, before the General Assembly, 72nd Session, 20th Plenary Meeting, 23 September 2017, document A/72/PV.20; **Vol. V, Annex 81**, United Nations, Statement of H.E. Adel Ahmed Al-Jubeir, Minister of Foreign Affairs of the Kingdom of Saudi Arabia before the General Assembly, 72nd Session, 20th Plenary Meeting, 23 September 2017, document A/72/PV.20.

*Twitter* to promote unrest in the region, calling on the Qatari public to “fulfil the needs of the mujahidin in equipment, men, and funds” in Syria, Iraq, and Yemen<sup>114</sup>. Al-Nu’aymi remains in close relations with the highest levels of Qatar’s Government<sup>115</sup>. Qatar has also failed to prosecute Sa’d bin Sa’d Muhammad Shariyan Al-Ka’bi and ‘Abd al-Latif Bin ‘Abdallah Salih Muhammad Al-Kawari, both sanctioned by the United Nations as “major facilitators” of Al-Qaida and the Al Nusra Front, who have set up and run public donation campaigns unfettered in Qatar<sup>116</sup>.

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<sup>114</sup> **Vol. VI, Annex 112**, A. R. al-Nu’aymi (@binomeir), *Twitter*, 14 December 2016, 05:08 a.m.

<sup>115</sup> For example, in April 2018, Qatar’s Prime Minister Adbullah bin Nasser bin Khalifa Al-Thani attended Al-Nu’aymi’s son’s wedding and was photographed with Al-Nu’aymi and Hamas leader Khaled Mishaal. **Vol. VI, Annex 116**, “Qatar Must Improve Relations with Neighbors, Desist from Backing up Extremism, Terrorism, Regional Destabilization, Saudi Ambassador to UK Says”, *Saudi Press Agency*, 25 April 2018; **Vol. VI, Annex 114**, D. McElroy, “Qatar’s Top Terror Suspect Hosts Prime Minister at Wedding”, *The National*, 17 April 2018. The Qatari government later admitted to the Prime Minister attending the wedding, but claimed that there was “no hypocrisy” in his attendance. **Vol. VI, Annex 115**, “Qatar Says ‘No Hypocrisy’, Admits to PM Attending Wedding of Terrorist’s Son”, *Al Arabiya*, 22 April 2018.

<sup>116</sup> **Vol. VI, Annex 95**, Security Council Committee Pursuant to Resolutions 1267 (1999), 1989 (2011) and 2253 (2015) Concerning ISIL (Da’esh) Al-Qaida and Associated Individuals, Groups, Undertakings and Entities, *Narrative Summaries of Reasons for Listing QDi.380 Abd al-Latif bin Abdallah Salih Muhammad al-Kawari*, United Nations Security Council Subsidiary Organs (last updated 21 September 2015); **Vol. VI, Annex 96**, Security Council Committee Pursuant to Resolutions 1267 (1999), 1989 (2011) and 2253 (2015) Concerning ISIL (Da’esh) Al-Qaida and Associated Individuals, Groups, Undertakings and Entities, *Narrative Summaries of Reasons for Listing QDi.382Sa’d bin Sa’d Muhammad Shariyan al-Ka’bi*, United Nations Security Council Subsidiary Organs (last updated 21 September 2015); **Vol. VII, Annex 136**, United States Department of Treasury Press Release, “Treasury Designates Financial Supporters of Al-Qaida and Al-Nusrah Front”, 5 August 2015.

2.39 There can be no doubt that Qatar has persisted in allowing its territory to be a permissive jurisdiction for terrorism financing<sup>117</sup>. Despite international efforts to impose sanctions on private supporters of terrorism within the country, the Qatari Government has taken no significant steps to stop the flow of money to extremists<sup>118</sup>.

C. STATE-SPONSORED DISSEMINATION OF HATE SPEECH AND INCITEMENT TO VIOLENCE ON *AL JAZEERA*

2.40 Security Council Resolution 1624 (2005) called upon all States to prohibit by law incitement to commit terrorist acts, prevent such conduct, and deny safe haven to anyone suspected to be guilty of such conduct<sup>119</sup>.

2.41 Further, under the Riyadh Agreements, Qatar is under an obligation not to allow its media to be used as a platform to destabilize its GCC neighbours or Egypt<sup>120</sup>. Qatar specifically undertook not to allow its state-

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<sup>117</sup> See **Vol. V, Annex 80**, United Nations, Statement by H.E. Shaikh Khalid Bin Ahmed Bin Mohamed Al Khalifa, Minister of Foreign Affairs of the Kingdom of Bahrain, before the General Assembly, 72nd Session, 20th Plenary Meeting, 23 September 2017, document A/72/PV.20; **Vol. V, Annex 81**, United Nations, Statement of H.E. Adel Ahmed Al-Jubeir, Minister of Foreign Affairs of the Kingdom of Saudi Arabia before the General Assembly, 72nd Session, 20th Plenary Meeting, 23 September 2017, document A/72/PV.20; **Vol. V, Annex 83**, United Nations, Statement by H.E. Shaikh Khalid Bin Ahmed Bin Mohamed Al Khalifa, Minister of Foreign Affairs of the Kingdom of Bahrain, before the 73rd Session of the United Nations General Assembly, 29 September 2018; **Vol. III, Annex 24**, ICAO Preliminary Objections, Exhibit 19, Remarks of Under Secretary for Terrorism and Financial Intelligence David Cohen before the Center for a New American Security on “Confronting New Threats in Terrorist Financing”, 4 March 2014.

<sup>118</sup> **Vol. V, Annex 76**, Saudi Arabia Fact Sheet, “Qatar’s History of Funding Terrorism and Extremism”, 27 June 2017.

<sup>119</sup> **Vol. VI, Annex 90**, United Nations Security Council Resolution 1624 (2005), document S/RES/1624, 14 September 2005, para. 1.

<sup>120</sup> **Vol. II, Annex 19**, First Riyadh Agreement, 23 and 24 November 2013, Art. 1; **Vol. II, Annex 20**, Implementing Mechanism, 17 April 2014, Art. 1(a); **Vol. II, Annex 21**, Supplementary Riyadh Agreement, 16 November 2014, Art. 3(d).

owned and –controlled media network *Al Jazeera* to be used for this purpose, including broadcasts by *Al Jazeera Mubashir Masr* in respect of Egypt<sup>121</sup>. Yet *Al Jazeera* has long been used as a platform for terrorist groups, and Qatar has taken no steps to end this.

2.42 In fact, *Al Jazeera* regularly features leadership figures of the Muslim Brotherhood and Hamas, who are given a platform to propound their calls for extremism and violence<sup>122</sup>. The network also continues to feature leaders and spokespersons from other designated terrorist organizations, including Al-Qaida’s Syria branch, the Al Nusra Front<sup>123</sup>.

2.43 The Appellants have denounced *Al Jazeera* and other Qatari media that continue to serve as platforms for extremist and terrorist groups<sup>124</sup>. They are not alone in exposing that, while purporting to be a “news outlet”, *Al Jazeera* serves as an instrument to destabilize the region.

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<sup>121</sup> *Ibid.*

<sup>122</sup> See, e.g., **Vol. VI, Annex 101**, Video Excerpt of Yusuf Al-Qaradawi, *Al-Jazeera Television*, 28-30 January 2009; **Vol. VI, Annex 102**, Video Excerpt of Yusuf Al-Qaradawi, ‘Sharia and Life’, *Al-Jazeera Television*, 17 March 2013; see also **Vol. VI, Annex 113**, A. Tamimi, “‘Hamas’ Political Document: What to Expect”, *Al Jazeera*, 1 May 2017.

<sup>123</sup> See, e.g., statements made by the leader of Al Nusra Front on Al Jazeera: **Vol. VI, Annex 111**, “Al-Nusra Leader Jolani Announces Split from al-Qaeda”, *Al Jazeera*, 29 July 2016.

<sup>124</sup> See **Vol. V, Annex 80**, United Nations, Statement by H.E. Shaikh Khalid Bin Ahmed Bin Mohamed Al Khalifa, Minister of Foreign Affairs of the Kingdom of Bahrain, before the General Assembly, 72nd Session, 20th Plenary Meeting, 23 September 2017, document A/72/PV.20; **Vol. V, Annex 81**, United Nations, Statement of H.E. Adel Ahmed Al-Jubeir, Minister of Foreign Affairs of the Kingdom of Saudi Arabia before the General Assembly, 72nd Session, 20th Plenary Meeting, 23 September 2017, document A/72/PV.20; **Vol. V, Annex 82**, United Nations, Statement of H.E. Adel Ahmed Al-Jubeir, Minister of Foreign Affairs of the Kingdom of Saudi Arabia before the General Assembly, 73rd Session, 28 September 2018.

#### D. VIOLATION OF THE PRINCIPLE OF NON-INTERVENTION

2.44 The principle of non-intervention in the internal affairs of States is well established in international law<sup>125</sup>. It is the corollary of the principles of sovereign equality, political independence, and self-determination enshrined in the Charter of the United Nations<sup>126</sup>. Qatar's purposeful and systematic intervention in the internal affairs of the Appellants, including through its support for terrorist groups and extremist ideologies, is a flagrant violation of this fundamental principle of general international law.

2.45 Qatar has continued to interfere in the internal affairs of its neighbouring States. Notably, a 16 September 2017 judgment of Egypt's Court of Cassation confirms that between 2011 and 2013, former President Morsi and

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See, e.g., *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, *I.C.J. Reports 1986*, p. 106, para. 202; **Vol. VI, Annex 86**, United Nations, General Assembly Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, document A/RES/25/2625, 24 October 1970. See also **Vol. VI, Annex 85**, United Nations, General Assembly Resolution 2131 (XX), Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, document A/RES/20/2131, 21 December 1965, para. 2 ("no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State"); **Vol. II, Annex 3**, Pact of the League of Arab States, signed at Cairo on 22 March 1945, 70 *UNTS* 237, Art. 8 ("Every member State of the League shall respect the form of government obtaining in the other States of the League . . . and shall pledge itself not to take any action tending to change that form."); Charter of the Organization of African Unity, signed at Addis Ababa on 25 May 1963, 479 *UNTS* 39, Art. III ("The Member States . . . affirm and declare their adherence to the following principles: . . . [n]on-interference in the internal affairs of States."); Charter of the Organization of American States, signed at Bogotá on 30 April 1948, 119 *UNTS* 47, Art. 15 ("No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State.").

<sup>126</sup>

Charter of the United Nations, 24 October 1945, 1 *UNTS* XVI, Arts 1(2), 2(1) and 2(4).

other leadership figures in the then Muslim Brotherhood Government were paid by Qatari intelligence agents to disclose military and other secret information vital to Egypt's national security<sup>127</sup>.

2.46 In another example, Qatar offered lucrative financial incentives to selected Bahraini nationals, along with their entire families, to naturalize as Qatari citizens and emigrate to Qatar. These offers were targeted at Bahrainis who held or had held sensitive and high-level offices. This obviously raises a serious risk of compromising national security and interest. Bahrain strongly protested these practices on numerous occasions through diplomatic and other channels, including through the committees established to monitor compliance with the Riyadh Agreements<sup>128</sup>.

#### E. QATAR'S REPUDIATION OF THE RIYADH AGREEMENTS

2.47 That Qatar was not willing to be bound by the obligations in the Riyadh Agreements, even formally, was made clear in a letter to the Secretary General of the GCC on 19 February 2017<sup>129</sup>. Qatar claimed that "the subject of this agreement has been exhausted" and called upon the GCC countries to "agree to terminate the Riyadh Agreement which has been overtaken by events at the international and regional levels."<sup>130</sup> It also claimed, for the first time, that the Riyadh Agreements constituted an "abandonment" of the GCC Charter and did not "serve the interests and objectives of the GCC", calling for a return

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<sup>127</sup> **Vol. VII, Annex 137**, *Morsi and others v. Public Prosecution*, Case No. 32611, Judgment of the Court of Cassation of the Arab Republic of Egypt (Criminal Chamber), 16 September 2017.

<sup>128</sup> See, e.g., **Vol. V, Annex 64**, Fourth Report of the Follow-up Committee on the Implementation of the Riyadh Agreement Mechanism, 15 July 2014.

<sup>129</sup> **Vol. V, Annex 72**, Letter of 19 February 2017 from the Minister of Foreign Affairs of the State of Qatar to the Secretary-General of the GCC.

<sup>130</sup> *Ibid.*

to the GCC principles<sup>131</sup>. Seen as a whole, and in the context of Qatar’s overall conduct, this letter amounted to a repudiation by Qatar of its obligations under the Riyadh Agreements. It also demonstrated Qatar’s unwillingness to cease its hostile policy against Egypt, including Qatar’s continuing support of the Muslim Brotherhood, in disregard of its express commitments.

#### F. RANSOM PAYMENTS TO TERRORISTS

2.48 Shortly thereafter, in April 2017, Qatar sent hundreds of millions of dollars to Iraq on a Qatar Airways jet, as a purported ransom payment for the release of the kidnapped members of the Qatari royal family<sup>132</sup>. Iraqi authorities seized the money on board the plane<sup>133</sup>. However, Qatar persisted in its efforts by brokering a deal with Qasem Soleimani – the leader of the Iranian Islamic Revolutionary Guard Corps (*IRGC*), designated as a sanctioned terrorist by, *inter alia*, the United Nations<sup>134</sup> – to release the kidnapped members of the

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<sup>131</sup> *Ibid.*

<sup>132</sup> **Vol. VI, Annex 120**, P. Wood, “‘Billion Dollar Ransom’: Did Qatar Pay Record Sum?”, *BBC*, 17 July 2018; **Vol. VI, Annex 117**, J. Warrick, “Hacked Messages Show Qatar Appearing to Pay Hundreds of Millions to Free Hostages”, *The Washington Post*, 28 April 2018.

<sup>133</sup> **Vol. VI, Annex 117**, J. Warrick, “Hacked Messages Show Qatar Appearing to Pay Hundreds of Millions to Free Hostages”, *The Washington Post*, 28 April 2018.

<sup>134</sup> Soleimani has been sanctioned by the UN, EU, and United States. See **Vol. VI, Annex 99**, United Nations Security Council, “The List established and maintained pursuant to Security Council res. 223 (2015)”, generated on 23 November 2018; **Vol. VI, Annex 91**, Council Implementing Regulation (EU) No 611/2011 of 23 June 2011 Implementing Regulation (EU) No 422/2011 Concerning Restrictive Measures in View of the Situation in Syria, 2011 O.J. (L 164/1); **Vol. VII, Annex 132**, United States Department of Treasury Press Release, “Treasury Sanctions Five Individuals Tied to Iranian Plot to Assassinate the Saudi Arabian Ambassador to the United States”, 11 October 2011; **Vol. VII, Annex 131**, United States Department of Treasury Press Release, “Administration Takes Additional Steps to Hold the Government of Syria Accountable for Violent Repression Against the Syrian People”, 18 May 2011; **Vol. VII, Annex 129**, United States Department of Treasury Press Release, “Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism”, 25 October 2007.

royal family, partly in exchange for an influx of cash to Iran’s IRGC and its affiliated sectarian militia, Iraq’s Kata’ib Hezbollah, as well as Hayat Tahrir al-Sham, formerly known as Al-Nusra Front, an Al-Qaida affiliate<sup>135</sup>. Contemporaneous text and telephone messages from Qatari officials confirm the ransom payments<sup>136</sup>. Ultimately, Qatar was successful in delivering as much as US\$1 billion<sup>137</sup>. In response, Egypt called on the United Nations Security Council to open an investigation into Qatar’s payment as a ransom to terrorist groups<sup>138</sup>.

2.49 United Nations Security Council Resolution 2133 (2014) states that ransom payments to terrorist groups “create[] more victims and perpetuate[] the problem” and “are one of the sources of income which supports their recruitment efforts, strengthens their operational capability to organize and carryout terrorist attacks”<sup>139</sup>. Accordingly, the Resolution explicitly “[c]alls upon all Member States to prevent terrorists from benefiting directly or

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<sup>135</sup> **Vol. VI, Annex 117**, J. Warrick, “Hacked Messages Show Qatar Appearing to Pay Hundreds of Millions to Free Hostages”, *The Washington Post*, 28 April 2018. In one text, the Ambassador of Qatar to Iraq stated that US\$50 million would be paid to Qassem Soleimani, US\$50 million to a provincial government official who facilitated the negotiations, US\$25 million to Kata’ib leader Abu Hussain, and US\$20 million to an Iranian official. *Ibid.*

<sup>136</sup> **Vol. VI, Annex 117**, J. Warrick, “Hacked Messages Show Qatar Appearing to Pay Hundreds of Millions to Free Hostages”, *The Washington Post*, 28 April 2018. The Washington Post released the messages. **Vol. VI, Annex 121**, “Hacked Phone Messages Shed Light on Massive Payoff that Ended Iraqi Hostage Affair”, *The Washington Post*, Undated.

<sup>137</sup> **Vol. VI, Annex 117**, J. Warrick, “Hacked Messages Show Qatar Appearing to Pay Hundreds of Millions to Free Hostages”, *The Washington Post*, 28 April 2018.

<sup>138</sup> **Vol. III, Annex 24**, ICAO Preliminary Objections, Exhibit 10, United Nations Security Council, 7962nd Meeting, document S/PV.7932, 8 June 2017, Statement of Egypt, p. 16. See also **Vol. VI, Annex 97**, United Nations Security Council, 8007th Meeting, document S/PV.8007, 20 July 2017.

<sup>139</sup> **Vol. VI, Annex 92**, United Nations Security Council Resolution 2133 (2014), document S/RES/2133, 27 January 2014.

indirectly from ransom payments or from political concessions and to secure the safe release of hostages”<sup>140</sup>. United Nations Security Council Resolution 2199 (2015), adopted under Chapter VII, reiterated this call and reaffirmed that the obligation to freeze assets of those designated under the ISIL Da’esh/Al-Qaida Sanctions Committee applies to the payment of ransoms to individuals, groups, undertakings or entities on that list, regardless of how or by whom the ransom is paid<sup>141</sup>. Similarly, the International Convention for the Suppression of the Financing of Terrorism (*ICSFT*) prohibits providing funds that may be used to carry out terrorist acts<sup>142</sup>.

2.50 In short, the payment of the ransom merely confirmed that Qatar was intent on unlawfully supporting extremists and terrorist groups.

### **Section 5. The Appellants have reacted lawfully to Qatar’s violations of international law**

2.51 Faced with Qatar’s multiple and continued breaches of its international obligations, and after years of diplomatic efforts, the Appellants were left with little choice but to take action in order to induce Qatar to comply with its international obligations.

2.52 The measures that the Appellants took in June 2017, including those outlined in this Chapter, were the culmination of a lengthy deliberative process

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<sup>140</sup> *Ibid.*

<sup>141</sup> **Vol. VI, Annex 94**, United Nations Security Council Resolution 2199 (2015), adopted by the Security Council at its 7395th meeting, document S/RES/2199, 12 February 2015.

<sup>142</sup> The ICSFT prohibits “provid[ing] or collect[ing] funds . . . in the knowledge that they are to be used, in full or in part, in order to carry out” terrorist acts. **Vol. II, Annex 12**, ICSFT, Art. 2.

conducted through the framework of the Riyadh Agreements and other diplomatic exchanges.

A. THE AIRSPACE RESTRICTIONS WERE ADOPTED BY THE APPELLANTS AS LAWFUL COUNTERMEASURES

2.53 On 5 June 2017, the Appellants severed diplomatic relations with Qatar and adopted a number of other measures, including the airspace restrictions that form the basis for Qatar's claims in its Applications to the ICAO Council. Those measures were intended to induce Qatar to comply with its international obligations, and thus constitute lawful countermeasures under customary international law<sup>143</sup>.

2.54 By notices to airmen (*NOTAMs*) issued on 5 June 2017, the Appellants restricted the airspace over their respective territories in respect of overflight by Qatar-registered aircraft. The NOTAMs were revised later that week after coordination between the ICAO Middle East Regional Office (*ICAO MID Office*) in Cairo and the States concerned. The revised NOTAMs clarified that the airspace restrictions applicable to Qatar-registered aircraft were limited to the Appellants' airspace – i.e., the airspace over the territory of each of the Appellants, including their respective territorial seas within the relevant flight

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<sup>143</sup> The preliminary objections made by the Appellants before the ICAO Council, including their good faith invocation of countermeasures, are entirely without prejudice to the Appellants' position on the merits of the claim made by Qatar under the Chicago Convention. See also **Vol. III, Annex 24**, ICAO Preliminary Objections, para. 8.

information region(s) (*FIR(s)*) – and did not apply to international airspace over the high seas<sup>144</sup>.

2.55 The Appellants cooperated extensively and in a timely manner with both ICAO and Qatar to agree to and implement contingency routes and related contingency arrangements and to avoid unnecessary disruption of air traffic as a result of the airspace restrictions. Notably, the Appellants worked in close collaboration with the ICAO MID Office in Cairo to adopt urgent contingency measures to ensure the continuing safety, regularity, and efficiency of air traffic. Further, the Appellants have made it clear that their airspace and airports remain open to Qatar-registered aircraft in cases of emergency. In any event, the airspace over the high seas within the FIR of each of the Appellants remains available to Qatar-registered aircraft, subject to normal procedures relating to air traffic services route connectivity and successful safety assessment.

#### B. COUNTERMEASURES AS A CIRCUMSTANCE PRECLUDING WRONGFULNESS UNDER GENERAL INTERNATIONAL LAW

2.56 International law permits a State to adopt countermeasures in response to a breach by another State of its international obligations. Countermeasures are non-forcible measures consisting of the temporary suspension of the performance of one or more international obligations, adopted with a view to inducing the wrongdoing State to comply with its international obligations. The wrongfulness of conduct of a State is precluded to the extent that it constitutes a lawful countermeasure.

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<sup>144</sup> **Vol. V, Annex 35**, ICAO, Working Paper presented by the Secretary General, Council – Extraordinary Session, concerning the Request of Qatar – Item under Article 54(n) of the Chicago Convention, ICAO document C-WP/14639, 14 July 2017, para. 2.1.

2.57 The right of States under international law to adopt countermeasures in response to a violation of obligations by another State has been repeatedly and consistently affirmed by both the Court and international arbitral tribunals:

(a) In *Gabčíkovo-Nagymaros Project*, having found that Czechoslovakia had committed an internationally wrongful act (i.e., breached its international obligations), the Court turned to consider:

“whether such wrongfulness may be precluded on the ground that the measure so adopted was in response to Hungary’s prior failure to comply with its obligations under international law.”<sup>145</sup>

In that regard, the Court held that “in order to be justifiable, a countermeasure must meet certain conditions”<sup>146</sup>. Although it ultimately concluded that, on the facts before it, those conditions had not been fulfilled, the Court recognized that the wrongfulness of conduct that would otherwise constitute a breach of a State’s international obligations could in principle be precluded to the extent that it qualified as a lawful countermeasure<sup>147</sup>.

(b) The Court in *Application of the Interim Accord* also accepted the possibility that valid countermeasures, in principle, may afford a defence to a claim of breach of obligation. In particular, it discussed

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<sup>145</sup> *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 55, para. 82.

<sup>146</sup> *Ibid.*, para. 83.

<sup>147</sup> *Ibid.* In a similar fashion, in *Military and Paramilitary Activities in and against Nicaragua*, the Court observed that the internationally wrongful acts of which Nicaragua was accused—if proven and found to be attributable to it—might “have justified proportionate counter-measures on the part of the State which had been the victim of these acts . . .”: *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 127, para. 249.

(and eventually dismissed on its merits), Greece's argument that any non-compliance by it with its obligations under the Interim Accord by reason of its objection to the admission of Macedonia to NATO "could be justified ... as a countermeasure under the law of State responsibility"<sup>148</sup>; in doing so, it made reference to "the law governing countermeasures"<sup>149</sup>.

(c) Previously, the Arbitral Tribunal in the *Air Services Agreement* case had recognized the legality of countermeasures, explaining that:

"Under the rules of present-day international law, and unless the contrary results from special obligations arising under particular treaties, notably from mechanisms created within the framework of international organisations, each State establishes for itself its legal situation vis-à-vis other States. If a situation arises which, in one State's view, results in the violation of an international obligation by another State, the first State is entitled, within the limits set by the general rules of international law pertaining to the use of armed force, to affirm its rights through 'counter-measures'."<sup>150</sup>

2.58 Relying on relevant international precedents prior to 2001, the United Nations International Law Commission (*ILC*), in the context of its work on the law of State responsibility likewise recognized that, to the extent that non-performance of an obligation is undertaken by way of valid countermeasure, in principle it may constitute a circumstance precluding wrongfulness. Article 22

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<sup>148</sup> *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment, *I.C.J. Reports 2011*, p. 680, para. 114; and see *ibid.*, p. 682, paras 120 and 121.

<sup>149</sup> *Ibid.*, p. 692, para. 164.

<sup>150</sup> *Air Service Agreement of 27 March 1946 between the United States of America and France*, Award, 9 December 1978, *RIAA*, Vol. XVIII, p. 443, para. 81.

of the *Articles on Responsibility of States for Internationally Wrongful Acts* (*ARSIWA*) provides:

“The wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State.”<sup>151</sup>

2.59 As a matter of customary international law, there is no requirement that countermeasures should involve suspension of the same or a closely related obligation, or an obligation arising under the same treaty as the obligation breached (so-called “reciprocal countermeasures”)<sup>152</sup>.

2.60 Before the ICAO Council, Qatar did not dispute the availability, in principle, of countermeasures as a circumstance precluding the wrongfulness of the airspace restrictions under general international law. Instead, it took the narrow position that the question of whether or not the airspace restrictions adopted by the Appellants constitute valid countermeasures could have no impact on the jurisdiction of the ICAO Council, and it was instead a matter for the merits<sup>153</sup>.

2.61 Further, Qatar did not seek to suggest that the Chicago Convention precludes States parties from resorting to countermeasures involving the

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<sup>151</sup> **Vol. II, Annex 13**, International Law Commission (*ILC*), Articles on Responsibility of States for Internationally Wrongful Acts (2001), in *Report of the International Law Commission on the Work of its Fifty-third Session* (2001), document A/56/10, Chapter V, reproduced in *ILC Yearbook 2001*, Vol. II(2) (*ARSIWA*), Art. 22.

<sup>152</sup> *Ibid.*, *Introductory Commentary to Part Three*, Chapter II, para. 5. The term “reciprocal countermeasures” refers to “countermeasures which involve suspension of performance of obligations towards the responsible State ‘if such obligations correspond to, or are directly connected with, the obligation breached’”. *Ibid.* (internal reference omitted).

<sup>153</sup> **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, paras 75-77.

suspension of performance of their obligations in response to a breach by another Contracting Party of its international obligations.

2.62 As such, it is common ground that the States parties to the Chicago Convention in principle retain their sovereign rights under customary international law to adopt measures involving the suspension of performance of their obligations owed to another State party under the Convention by way of countermeasure in response to a prior breach of international obligations by that State<sup>154</sup>.

### C. IMPLEMENTATION AND ENFORCEMENT OF THE RIYADH AGREEMENTS

2.63 Quite apart from the undoubted (and undisputed) availability of countermeasures as a circumstance precluding wrongfulness under general international law, the Riyadh Agreements expressly foresee and recognize the possibility that, in the event of a breach by one State party, the other States parties would be entitled to take action in response.

2.64 In particular, the Implementing Mechanism provides for periodic meetings of the Foreign Ministers of the States parties in order to monitor the implementation of the Riyadh Agreement (and the reiteration of the obligations undertaken in the Implementing Mechanism itself). In this regard, the Foreign Ministers are to report to the Heads of State, and it was stipulated that:

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<sup>154</sup> In respect of Egypt, the measures were imposed to induce Qatar's compliance with its general international law obligations, including under the applicable international treaties and United Nations Resolutions on terrorism and were justified on this basis alone. In addition, they were also aimed at inducing compliance with the obligations owed to Egypt under the Riyadh Agreements as a third-party beneficiary. See Vienna Convention on the Law of Treaties, signed at Vienna on 23 May 1969, 1155 *UNTS* 331, Art. 36; **Vol. II, Annex 20**, Implementing Mechanism, 17 April 2014, Art. 2; and **Vol. II, Annex 21**, Supplementary Riyadh Agreement, 16 November 2014, Art. 3(d).

“The leaders shall take the appropriate action towards what the Ministers of Foreign Affairs raise to them regarding any country that has not complied with the signed agreement by the GCC Countries.”<sup>155</sup>

2.65 The final provision of the Implementing Mechanism puts beyond any doubt that the States parties thereto envisaged that action might be taken to induce compliance in the event of a breach of the obligations undertaken. It provides that:

“[i]f any country of the GCC Countries failed to comply with this mechanism, the other GCC Countries shall have the right to take any appropriate action to protect their security and stability.”<sup>156</sup>

2.66 The possibility of action to ensure the due implementation of the obligations undertaken in the Riyadh Agreement and the Implementing Mechanism was reiterated in the Supplementary Riyadh Agreement adopted in November 2014. Article 3(a) of the Supplementary Riyadh Agreement built on and linked the specific obligations undertaken therein to the obligations under the preceding agreements, stipulating that “non-committing to any of the articles of the Riyadh Agreement and its executive mechanism amounts to a violation of the entirety of them.”<sup>157</sup> Further, Article 4 of the Supplementary Riyadh Agreement – in respect of which Egypt is also a beneficiary<sup>158</sup> – stressed that the First Riyadh Agreement, the Implementing Mechanism and the Supplementary Riyadh Agreement itself:

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<sup>155</sup> **Vol. II, Annex 20**, Implementing Mechanism, 17 April 2014.

<sup>156</sup> *Ibid.*

<sup>157</sup> **Vol. II, Annex 21**, Supplementary Riyadh Agreement, 16 November 2014, Art. 3(a).

<sup>158</sup> See above, para. 2.62, note 154.

“requires the full commitment to its implementation. The leaders have tasked the intelligence chiefs to follow up on the implementation of the results of this supplementary agreement and to report regularly to the leaders, *in order to take the measures they deem necessary to protect the security and stability of their countries.*”<sup>159</sup>

2.67 The States parties to the Riyadh Agreements thus expressly recognized the possibility that any breach of the obligations undertaken in the Riyadh Agreements, including the specific obligations in respect of non-intervention in the internal affairs of Egypt, would permit the other States parties to respond by adopting measures in order to induce compliance. In such circumstances, Qatar could have been in no doubt that, if it failed to cease its internationally wrongful conduct and comply with the obligations it had undertaken, it was possible, and indeed likely, that the other States would adopt countermeasures.

### **Section 6. Summary**

2.68 Qatar’s Application to the ICAO Council seeks to focus on the narrow question of whether the airspace restrictions are consistent with the Appellants’ obligations under the Chicago Convention and the IASTA. In framing its Applications in this manner, however, Qatar improperly seeks to isolate only one element of the wider dispute between the Parties, and ignores the real issue in dispute, which concerns Qatar’s own internationally wrongful acts. Qatar similarly fails to acknowledge that its own conduct provoked the severance of relations and the adoption by the Appellants of the measures of which Qatar now complains.

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<sup>159</sup> **Vol. II, Annex 21**, Supplementary Riyadh Agreement, 16 November 2014, Art. 4 (emphasis added).

2.69 Having repudiated the obligations undertaken in the Riyadh Agreements and repeatedly violated multiple other obligations under international law, Qatar refused to make any good-faith efforts to discuss these issues with the Appellants, and refused to put an end to and remedy its breaches of its international obligations. Instead, Qatar has continued its internationally wrongful conduct and maintained its position that it will not cease these internationally wrongful acts.

2.70 This is the wider context of the artificially narrow matter that Qatar has sought to bring before the ICAO Council, which relates to one of the measures adopted by the Appellants with a view to inducing Qatar to cease its internationally wrongful conduct. As is explained below in Chapter V, this course of events forms the necessary background that must be taken into account in ascertaining the competence of the ICAO Council to adjudicate the disagreements submitted by Qatar in its Applications.

### **CHAPTER III**

#### **FIRST GROUND OF APPEAL: LACK OF DUE PROCESS**

3.1 The first ground of appeal against the Decision relates to the procedure followed by the ICAO Council. The ICAO Council failed to uphold fundamental principles of due process, which also constitute general principles of law, to the detriment of the Appellants (who were the respondents before the ICAO Council). These failures were so grave and so widespread as to denude the proceedings and the Decision of any judicial character.

3.2 This may be seen from the following summary:

- (a)* Patently insufficient time was allocated to the Appellants to present their case before the ICAO Council; what is more, the four Appellants, collectively, were given the same length of time as Qatar, although each of the four States was appearing as a respondent party in its own right and although presenting a collective case required additional time as compared to that needed by Qatar as a single party;
- (b)* The Decision was taken by secret ballot despite a request by the Appellants for a roll call vote with open voting;
- (c)* The ICAO Council incorrectly required 19 votes to uphold the Preliminary Objections, out of 33 members entitled to participate in the vote, even though Article 52 of the Chicago Convention provides only that a simple “majority” is needed (i.e., 17 votes);
- (d)* The ICAO Council disposed of the two Preliminary Objections raised by the Appellants as a single plea, even though they were being advanced as separate grounds, each being of itself dispositive of the ICAO Council’s competence to hear the dispute before it. The ICAO

Council thus took its Decision on the wrong premise that there was a single objection;

- (e) The Decision failed to comply with the fundamental requirement to state reasons, which is also an express requirement under ICAO's own procedural rules;
- (f) Indeed, reasons could not be provided at all, as there was no deliberation or even discussion in the ICAO Council, but instead a (secret) vote was taken immediately after oral argument, this constituting an abdication by the ICAO Council of its collegial judicial function; and
- (g) The fact that a decision was taken without any discussion or deliberation indicates that the Decision had been pre-determined, quite possibly because the ICAO Council representatives were acting on instructions from their governments.

3.3 This Chapter starts with a description of the ICAO Council's elementary duty to uphold due process (Section 1). It proceeds to describe the chronology of the proceedings before the ICAO Council (Section 2), and then turns to the defects in the procedures adopted by the ICAO Council and ultimately its Decision (Section 3). The Appellants respectfully invite the Court to find that, tainted as it is by numerous and grave irregularities, the Decision of the ICAO Council is null and void (Section 4).

### **Section 1. The judicial function of the ICAO Council**

3.4 In carrying out the judicial functions conferred upon it by Article 84 of the Chicago Convention, the ICAO Council was required to respect the Appellants' fundamental rights of due process. In this case, the ICAO Council

not only failed to follow the ICAO Rules, but it also adopted a procedure which, viewed in its totality, was inimical to a properly conducted judicial process. What is more, it failed to include the safeguards necessary to preserve the integrity of the process. In particular, the ICAO Council failed to take notice of or act upon the fact that a member of ICAO's Legal and External Relations Bureau who advised the ICAO Council during the Article 54 proceedings brought by Qatar, subsequently advised and acted for Qatar before the ICAO Council in the Article 84 proceedings arising out of the *same dispute*<sup>160</sup>. It is to be noted in that connection that the Legal and External Affairs Bureau of ICAO was on occasion entrusted with judicial duties by the ICAO Council. By failing to identify and treat this appearance before it as a conflict of interest, the ICAO Council failed to instil confidence in the process for all parties involved.

3.5 That the ICAO Council was required in this case to exercise a judicial function – i.e., the binding resolution of a legal dispute concerning the interpretation or application of the Chicago Convention – appears to be common ground between the Parties<sup>161</sup>. Under Chapter XVIII of the Chicago Convention, the ICAO Council is empowered to adjudicate any disagreement

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<sup>160</sup> See **Vol. V, Annex 34**, Item under Article 54(n) of the Convention on International Civil Aviation – Request of the State of Qatar, ICAO Council – 211th Session, Summary Minutes of the Tenth Meeting of 23 June 2017, ICAO document C-MIN 211/10, 11 July 2017 (where Mr Augustin is listed as a member of the Secretariat in the Article 54 proceedings) and compare **Vol. V, Annex 53**, ICAO Council – 214th Session, Summary Minutes of the Eighth Meeting of 26 June 2018, ICAO document C-MIN 214/8, 23 July 2018, p. 2 (where Mr Augustin is listed as an advisor for Qatar in the subsequent Article 84 proceedings).

<sup>161</sup> Cf. **Vol. III, Annex 24**, ICAO Preliminary Objections, paras 15-19; **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, paras 11-14. Before the ICAO Council, Qatar, whilst disputing that the Council acted in a “judicial capacity” when performing its functions under Article 84, accepted that it, at the least acted in a “quasi-judicial capacity”. As a consequence, it took the position that it was not “necessary to decide whether the Council, when performing Article 84 functions, acts in a judicial or quasi-judicial capacity nor what difference would practically entail”. *Ibid.*, para. 14.

relating to the interpretation or application of the Convention between two or more Contracting States. Article 84 of the Chicago Convention provides that:

“If any disagreement between two or more contracting States relating to the interpretation or application of this Convention and its Annexes cannot be settled by negotiation, it shall, on the application of any State concerned in the disagreement, be decided by the ICAO Council.”

3.6 It should also be uncontroversial that when rendering a decision in performance of the judicial functions conferred on it by Article 84, the ICAO Council must proceed with respect for the fundamental rules of due process which “lie at the very foundation of the legal system”<sup>162</sup> and are inherent to any judicial proceeding<sup>163</sup>.

3.7 Without compliance with fundamental guarantees of due process, there can be no judicial process nor decision to speak of. Thus, the Court has held that “a fundamental error in procedure which has occasioned a failure of justice” or “a fundamental fault in the procedure followed” by a United Nations specialized agency may be grounds for review of a decision<sup>164</sup>. In addition, several international instruments provide for the setting-aside of arbitral awards

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<sup>162</sup> B. Cheng, *General Principles of Law as applied by International Courts and Tribunals* (2006), p. 390; H. Lauterpacht, *The Development of International Law by the International Court* (reprinted ed., 1982), p. 39.

<sup>163</sup> R. Kolb, “General Principles of Procedural Law”, in A. Zimmermann, C. Tomuschat, K. Oellers-Frahm and C. Tams (eds), *The Statute of the International Court of Justice: A Commentary* (2012), pp. 872, 876 and 877.

<sup>164</sup> *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 209, para. 92; *Judgment No.2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development, Advisory Opinion, I.C.J. Reports 2012*, pp. 23-24, paras 30-31, quoting the grounds for review included in the Statute of the United Nations Administrative Tribunal and the Statute of the International Labour Organization Administrative Tribunal.

tainted by a failure to follow due process. These include the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)<sup>165</sup>, the ICSID Convention (1966)<sup>166</sup>, and the UNCITRAL Model Law (1985 and 2006)<sup>167</sup>. Similarly, in its 1955 Draft Convention on Arbitral Procedure (which ultimately took the form of Model Rules on Arbitral Procedure to be adopted by States) the ILC gave effect to the rule that “a serious departure from a fundamental rule of procedure” is a ground for nullification of an award<sup>168</sup>. Among such “fundamental” rules are the right to a reasoned decision and the right to equal and impartial treatment<sup>169</sup>.

3.8 The ICAO Council, from its inception, appears to have been aware of the structural difficulties it would face in acquitting itself of its judicial function under Chapter XVIII of the Chicago Convention<sup>170</sup>.

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<sup>165</sup> New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, 330 *UNTS* 38, Art. V.

<sup>166</sup> ICSID Convention, adopted on 18 March 1965, 575 *UNTS* 159, entered into force on 14 October 1966, Art. 52(1)(d).

<sup>167</sup> **Vol. II, Annex 15**, UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006, Arts 34(2)(a)(iv) and 36(1)(a)(iv).

<sup>168</sup> **Vol. II, Annex 5**, ILC, Draft Convention on Arbitral Procedure adopted by the ILC at its Fifth Session, document A/CN.4/92 (1955), Art. 30(c); **Vol. II, Annex 7**, ILC, Model Rules on Arbitral Procedure adopted by the ILC at its Tenth Session, document A/CN.4/SER.A/1958/Add.1 (1958), Art. 35(c).

<sup>169</sup> **Vol. II, Annex 5**, ILC, Draft Convention on Arbitral Procedure adopted by the ILC at its Fifth Session, document A/CN.4/92 (1955), Art. 30 and commentary thereto; **Vol. II, Annex 7**, ILC, Model Rules on Arbitral Procedure adopted by the ILC at its Tenth Session, document A/CN.4/SER.A/1958/Add.1 (1958), Art. 35 and commentary thereto.

<sup>170</sup> See **Vol. VI, Annex 126**, G. F. Fitzgerald, “The Judgment of the International Court of Justice in the Appeal Relating to the Jurisdiction of the ICAO Council”, (1974) 12 *Canadian Yearbook of International Law* 153, p. 157.

3.9 The first Chairman of the ICAO Council, Edward Warner, observed in an article published in 1946, that the ICAO Council:

“was not shaped for a primarily judicial function. It is large; its membership is subject to change at any time at the discretion of the states which the members represent; and, above all, it is a group of national representatives, whereas true international economic regulation could be better operated by a tribunal of individuals whose sole and direct responsibility would be to the international organization and to the common interest of the international community.”<sup>171</sup>

3.10 Even after the adoption in 1957 of the ICAO Rules, which lay down the procedure to be followed by the ICAO Council in its consideration of disagreements submitted under Article 84 of the Chicago Convention and Article II, Section 2 of the IASTA<sup>172</sup>, doubts lingered, with commentators taking the view that the ICAO Council was equipped to resolve disputes of a technical nature only<sup>173</sup>. In September 2018, the ICAO Secretariat directed the

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<sup>171</sup> **Vol. VI, Annex 128**, E. Warner, “Notes from PICA0 Experience”, (1946) 1 *Air Affairs* 30, p. 37.

<sup>172</sup> **Vol. II, Annex 6**, ICAO Rules, Art. 1(1) and Parts I and III. The Rules also laid down the procedure to be followed in respect of a complaint submitted under Art. II, Sec. I of the IASTA and Art. IV, Sec. 2 of the International Air Transport Agreement: *ibid.*, Art. 1(2) and Parts II and III.

<sup>173</sup> **Vol. VI, Annex 125**, T. Buergenthal, *Law-making in the International Civil Aviation Organization* (1969), pp. 195-197; **Vol. VI, Annex 126**, G. F. Fitzgerald, “The Judgment of the International Court of Justice in the Appeal Relating to the Jurisdiction of the ICAO Council”, (1974) 12 *Canadian Yearbook of International Law* 153, p. 155; **Vol. VI, Annex 122**, R. I. R. Abeyratne, “Law Making and Decision Making Powers of the ICAO Council – A Critical Analysis”, (1992) 41 *Zeitschrift für Luft- und Weltraumrecht* 387, p. 394; **Vol. VI, Annex 123**, J. Bae, “Review of the Dispute Settlement Mechanism Under the International Civil Aviation Organization: Contradiction of Political Body Adjudication”, (2013) 4(1) *Journal of International Dispute Settlement*, 65, p. 70.

ICAO Legal Committee to consider whether the ICAO Rules needed to be revised and “aligned with the current ICJ Rules”<sup>174</sup>.

3.11 As noted by the Court in the *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, the “appeal to the Court contemplated by the Chicago Convention and [the IASTA] must be regarded as an element of the general regime established in respect of ICAO” and was designed to ensure “a certain measure of supervision by the Court”<sup>175</sup>. In his declaration appended to the Court’s Judgment, Judge Lachs noted, with specific reference to the functions of the ICAO Council under Article 84, that “in view of its limited experience on matters of procedure, and being composed of experts in other fields than law, [the ICAO Council] is no doubt in need of guidance, and it is surely this Court which may give it.”<sup>176</sup> It is indeed the function of the Court to set and supervise judicial decision-making standards in the international legal system: “[t]he Court is the principal judicial organ of the organised international community as a whole, and not less than that”<sup>177</sup>. As the guardian of the integrity of the international judicial process, it falls to the Court to exercise its supervisory authority in respect of procedural deficiencies by the ICAO Council.

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<sup>174</sup> Vol. V, Annex 54, ICAO, Working Paper of the Secretariat submitted to the Legal Committee for consideration at its 37th Session, ICAO document LC/37-WP/3-2, 27 July 2018.

<sup>175</sup> *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, Judgment, *I.C.J. Reports 1972*, p. 60, para. 26.

<sup>176</sup> *Declaration of Judge Lachs, Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, *I.C.J. Reports 1972*, p. 75.

<sup>177</sup> J. Crawford, “The International Court of Justice, Judicial Administration and the Rule of Law”, in D. W. Bowett and others, *The International Court of Justice, Process, Practice and Procedure* (1997), p. 113.

3.12 Such alleged deficiencies were at issue before the Court in the *India v. Pakistan* case. On the facts of that case, however, the Court rejected India’s complaints, holding that the alleged irregularities, if established, did not rise to the level of “prejudic[ing] in any fundamental way the requirements of a just procedure.”<sup>178</sup> By contrast, as described in more detail below, in the present case the ICAO Council *did* prejudice the requirement of a just procedure in a manner that is manifest, fundamental and comprehensive. The wholly inadequate and inappropriate procedure followed by the ICAO Council in hearing and adjudicating upon the disagreement submitted to it by Qatar calls for the Court to exercise its supervisory function and to find that the Decision of the ICAO Council is null and void.

## **Section 2. The proceedings before the ICAO Council**

### **A. QATAR’S APPLICATIONS**

3.13 On 5 June 2017, Bahrain, Egypt, Saudi Arabia and the UAE adopted certain measures in respect of Qatar-originating and -destined air traffic. On the same day, Qatar submitted a letter to ICAO’s Secretary-General regarding those measures<sup>179</sup>.

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<sup>178</sup> *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, I.C.J. Reports 1972, pp. 69-70, paras 44-45.

<sup>179</sup> **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, Exhibit 2, Letter from Qatar dated 5 June 2017, ref. QCAA/ANS.02/502/17, to the Secretary General.

3.14 By a series of letters sent between 5 and 17 June 2017<sup>180</sup>, Qatar requested the initiation of certain procedures against the Appellants concerning alleged violations of provisions of the Chicago Convention, the IASTA, as well as ICAO Assembly Resolution A39-15. In particular, Qatar requested that a special session of the ICAO Council be convened under Article 54(n) of the Chicago Convention to consider the “matter of the actions of the [Appellants] to close their airspace to aircraft registered in the State of Qatar”<sup>181</sup>. The Article 54(n) process refers to the consideration by the ICAO Council of any matter referred to it relating to the Convention by any contracting State, and is not a judicial proceeding subject to the Court’s appellate jurisdiction. In an extraordinary session held on 31 July 2017 pursuant to Article 54(n) of the Chicago Convention, the ICAO Council considered the issue of measures taken by Egypt, Bahrain, Saudi Arabia and the UAE to close their airspace to aircraft registered to the State of Qatar. It made a determination that the States involved had developed and put in place contingency arrangements to facilitate the flow

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<sup>180</sup> **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, Exhibit 2, Letter from Qatar dated 5 June 2017, ref. QCAA/ANS.02/502/17, to the Secretary General; Exhibit 3, letter of the Qatar Civil Aviation Authority to the President of the Council, dated 8 June 2017, ref. 2017/15984; Exhibit 4, Letter from the Minister of Transport and Communications of Qatar dated 13 June 2017 to the Secretary General, ref. 2017/15993; and Exhibit 5, Letter to the Secretary General from the Chairman of the CAA of Qatar dated 13 June 2017, ref. 2017/15994. See also **Vol. V, Annex 31**, Request of the State of Qatar for Consideration by the ICAO Council under Article 54(n) of the Chicago Convention, 15 June 2017.

<sup>181</sup> **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, Exhibit 3, letter of the Qatar Civil Aviation Authority to the President of the Council, dated 8 June 2017, ref. 2017/15984. Acceding to this request, the ICAO Council convened an extraordinary meeting to consider Qatar’s request on 31 July 2017. The record relating to Qatar’s application under Article 54(n) of the Chicago Convention can be found at **Vol. V, Annexes 33-41 and 56**.

of traffic over the high seas airspace in the Gulf region for the safe operation of civil aviation<sup>182</sup>.

3.15 At the same time, Qatar also stated its intention to initiate judicial proceedings before the ICAO Council under Article 84 of the Chicago Convention and Article II, Section 2 of the IASTA<sup>183</sup>.

3.16 On 15 June 2017, two applications and accompanying memorials were submitted by Qatar, one purported to be an application under Article 84 of the Chicago Convention, whilst the other purported to be a “complaint” under Article II, Section 1 of the IASTA<sup>184</sup>. As the ICAO Secretariat identified certain

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<sup>182</sup> **Vol. V, Annex 41**, ICAO Council – Summary Minutes of the Meeting of the Extraordinary Session of 31 July 2017, concerning the Request of Qatar – Item under Article 54(n) of the Chicago Convention, 22 August 2017, para. 60.

<sup>183</sup> **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, Exhibit 2, Letter from Qatar dated 5 June 2017, ref. QCAA/ANS.02/502/17, to the Secretary General of ICAO, pp. 1 and 6, penultimate paragraph; **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, Exhibit 4, Letter from the Minister of Transport and Communications of Qatar dated 13 June 2017 to the Secretary General of ICAO, ref. 2017/15993, p. 2; **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, Exhibit 5, Letter to the Secretary General from the Chairman of the CAA of Qatar dated 13 June 2017, ref. 2017/15994.

<sup>184</sup> **Vol. III, Annex 22**, Request for the Intervention of the ICAO Council in the Matter of the Actions of the Arab Republic of Egypt, the Kingdom of Saudi Arabia, the United Arab Emirates and the Kingdom of Bahrain to close their Airspace to aircraft registered in the State of Qatar, attaching Application (1) of the State of Qatar, Complaint Arising under the International Air Services Transit Agreement done in Chicago on December 7, 1944, and Application (2) of the State of Qatar, Disagreement Arising under the Convention on International Civil Aviation done in Chicago on December 7, 1944, 8 June 2017; cf. **Vol. V, Annex 41**, ICAO Council – Summary Minutes of the Meeting of the Extraordinary Session of 31 July 2017, concerning the Request of Qatar – Item under Article 54(n) of the Chicago Convention, 22 August 2017, paras 65 and 66.

deficiencies in these pleadings, however, Qatar was requested to rectify them and submit fresh applications<sup>185</sup>.

3.17 By letter dated 21 October 2017, delivered to ICAO on 30 October 2017, Qatar submitted two new applications and memorials<sup>186</sup>.

3.18 The ICAO Application and the accompanying ICAO Memorial named the Appellants as Respondents, invoking various violations of the Chicago Convention as a result of the airspace restrictions adopted by the Appellants on 5 June 2017<sup>187</sup>. In particular, Qatar alleged that:

“[o]n 5 June 2017, the Government of the [Appellants] announced, with immediate effect and without any previous negotiation or warning, that Qatar-registered aircraft are not permitted to fly to or from the airports within their territories and would be barred not only from their respective national air spaces.”<sup>188</sup>

Qatar’s request for relief, amongst other things, invited the ICAO Council to “determine that the Respondents violated by their actions against the State of Qatar their obligations under the Chicago Convention, its Annexes and other rules of international law”<sup>189</sup>.

3.19 By letter dated 17 November 2017, received by the Appellants on 20 November 2017, the ICAO Council set a deadline of twelve weeks (i.e.,

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<sup>185</sup> **Vol. V, Annex 41**, ICAO Council – Summary Minutes of the Meeting of the Extraordinary Session of 31 July 2017, concerning the Request of Qatar – Item under Article 54(n) of the Chicago Convention, 22 August 2017, paras 65 and 66.

<sup>186</sup> **Vol. III, Annex 23**, ICAO Application, p. 1.

<sup>187</sup> See above, Chapter II.

<sup>188</sup> **Vol. III, Annex 23**, ICAO Application, p. 1, paras 2 and 3.

<sup>189</sup> **Vol. III, Annex 23**, ICAO Application, last paragraph, repeated in ICAO Memorial, Sec. (f).

until 12 February 2018) for the submission of Counter-Memorials in respect of the two Applications, as envisaged by Article 3(1)(c) of the ICAO Rules<sup>190</sup>.

3.20 On 16 January 2018, Egypt, on behalf of the Appellants, sought an extension of the time limit for submission of the Counter-Memorials “to allow for sufficient time and ensure fair treatment of the Respondents”<sup>191</sup>. The request was granted by the ICAO Council on 9 February 2018, acting pursuant to Article 28(2) of the ICAO Rules; the time limit for submission of the Counter-Memorials was thus extended to 26 March 2018<sup>192</sup>.

#### B. THE APPELLANTS’ PRELIMINARY OBJECTIONS

3.21 On 19 March 2018, in compliance with Article 5(1) and (2) of the ICAO Rules, the Appellants raised two separate and distinct Preliminary Objections<sup>193</sup>. The Appellants thereby contested the jurisdiction of the ICAO Council to adjudicate the claims formulated by Qatar in its Application or, in the alternative, the admissibility of those claims.

3.22 The two Preliminary Objections may be summarized as follows:

(a) The Appellants have adopted a suite of measures in response to Qatar’s multiple, grave, and persistent breaches of its international obligations relating to matters essential to the security of the Appellants, and constitute (as stated from their inception) lawful countermeasures

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<sup>190</sup> **Vol. V, Annex 43**, Letter of 17 November 2017 from the Secretary-General of ICAO to the Appellants.

<sup>191</sup> **Vol. V, Annex 44**, Letter of 16 January 2018 from the Permanent Representative of the Arab Republic of Egypt on the ICAO Council to the President of the ICAO Council.

<sup>192</sup> **Vol. V, Annex 45**, Letter of 9 February 2018 from the Secretary-General of ICAO to the Appellants.

<sup>193</sup> **Vol. III, Annex 24**, ICAO Preliminary Objections.

seeking to induce compliance by Qatar with its obligations under international law. Thus, resolution of the claims submitted by Qatar would necessarily require the ICAO Council to assess all of Qatar's conduct and the totality of the four States' measures (including their proportionality), while part thereof may be said to relate to aviation matters that are within the scope of Article 84 of the Chicago Convention. Accordingly, were it to pronounce upon the set of issues which comprise the real dispute between the Parties, the ICAO Council would perforce have to rule on matters falling outside the narrow scope of its jurisdiction in respect of interpretation or application of the Chicago Convention (the *First Preliminary Objection*).

- (b) Qatar had not complied with a necessary precondition to the jurisdiction of the ICAO Council, contained in Article 84 of the Chicago Convention, of first attempting to resolve the disagreement regarding airspace restrictions through negotiations with the Appellants, prior to submitting its claims to the ICAO Council; and Qatar had also failed to comply with the attendant procedural requirement in Article 2(g) of the ICAO Rules of establishing in its Memorials that negotiations to settle the disagreement had taken place but were unsuccessful (the *Second Preliminary Objection*).

3.23 In accordance with Article 5(3) of the ICAO Rules, the proceedings on the merits in respect of Qatar’s ICAO Application were suspended pending the decision of the ICAO Council on the Preliminary Objections<sup>194</sup>.

3.24 On 30 April 2018, Qatar filed its Response<sup>195</sup>.

3.25 On 28 May 2018, in accordance with Article 28 of the ICAO Rules, the ICAO Council acceded to a request by the Appellants to file a rejoinder<sup>196</sup>. Qatar protested against this decision<sup>197</sup>. In accordance with the brief, two-week time limit set by the ICAO Council, the Rejoinder was filed on 12 June 2018<sup>198</sup>. Qatar did not seek a right of reply.

3.26 On 13 June 2018, the President of the ICAO Council informed the Parties that the ICAO Council would consider the Preliminary Objections in a half-day session to be held on 26 June 2018<sup>199</sup>.

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<sup>194</sup> **Vol. II, Annex 6**, ICAO Rules, Art. 5(3); see also *ibid.*, Art. 5(4), which provides that “[i]f a preliminary objection has been filed, the Council, after hearing the Parties, shall decide the question as a preliminary issue before any further steps are taken under these Rules”.

<sup>195</sup> **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections.

<sup>196</sup> **Vol. V, Annex 49**, Letter of 28 May 2018 from the Secretary-General of ICAO to the Appellants; **Vol. V, Annex 47**, Email of 24 May 2018 from the President of the ICAO Council to all Council Delegations. See **Vol. V, Annex 46**, Letter of 17 May 2018 from the Permanent Representative of the Arab Republic of Egypt to the President of the ICAO Council.

<sup>197</sup> **Vol. V, Annex 48**, Letter of 28 May 2018 from the Secretary-General of ICAO to the Appellants, attaching Email of 25 May 2018 from the Delegation of Qatar to the Secretary-General of ICAO.

<sup>198</sup> **Vol. IV, Annex 26**, ICAO Rejoinder.

<sup>199</sup> **Vol. V, Annex 50**, Letter of 13 June 2018 from the President of the ICAO Council to the Appellants, attaching Working Paper in respect of Application (A), ICAO document C- WP/14778, 23 May 2018.

3.27 The scheduling of only one half-day session for the hearing of their Preliminary Objections was met with strong objections by the Appellants, who indicated that it would not permit them sufficient time properly to co-ordinate and present their case. This matter was discussed in an informal meeting with the President of the ICAO Council on 19 June 2018, of which no official note exists. At that stage, the President informed the Parties that the four Appellants would be treated as one side, and that each side would be given 20 minutes to present its case on the Preliminary Objections in respect of each Application. In any event, the precise schedule and format of the hearing remained in a state of flux until 26 June 2018, the day of the hearing.

#### C. THE HEARING ON THE PRELIMINARY OBJECTIONS

3.28 The process for the hearing was elucidated and fixed only hours before the hearing. The President of the ICAO Council orally conveyed, in a meeting held immediately prior to the hearing, that each side should present its case as to both Applications (A) and (B) simultaneously. This was notwithstanding the fact that Saudi Arabia was not a party to the proceedings relating to Application (B). In the dispute between Pakistan and India, which involved only one State on each side, the ICAO Council held *five* meetings (from 27 to 29 July 1971) to hear the Parties, deliberate, and decide on a single preliminary objection lodged by India. In stark contrast, the Parties here—the four Appellants being treated as a single Party—were provided a total of 80 minutes to present their position on the two separate and distinct Preliminary Objections. Each side was afforded 25 minutes for first-round submissions and 15 minutes for rebuttal, on Applications (A) and (B). The ICAO Council heard both sides, held a vote, and reached a decision on the dispute before it in just one afternoon.

3.29 At the eighth meeting of its 214<sup>th</sup> Session on 26 June 2018, the ICAO Council heard brief oral arguments by the Parties. Immediately thereafter,

without the benefit of any transcript (only summary records are made available, months after the event), without asking any questions, and expressly forsaking any deliberations, the ICAO Council proceeded to a vote<sup>200</sup>. That vote was by way of secret ballot (despite the Appellants’ request for a roll call with open votes) on a single question, namely whether to accept what the ICAO Council characterized as “the Preliminary Objection” in respect of each Application<sup>201</sup>.

3.30 Despite an oral intervention by the Appellants to clarify that there were in fact two separate Preliminary Objections, each of which was capable of being dispositive of Qatar’s Applications, the question put to a vote and the ICAO Council Decision refer only to a single “preliminary objection”. As described in more detail below, this demonstrates a fundamental misunderstanding by the ICAO Council of the objections before it and of the manner in which they should have been determined, each separately from the other. It is also inconsistent with the Council’s own previous practice of ruling separately on each preliminary objection raised by a respondent before it<sup>202</sup>.

3.31 The ICAO Council proceeded with a secret ballot on the question “Do you accept the Preliminary Objection?”. Prior to the vote, two Council members separately requested clarification as to the meaning of a “yes” or “no” vote on the question as posed. The result of the secret ballot, in which 33 votes were cast by the Members of the Council considered eligible to vote, was

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<sup>200</sup> **Vol. V, Annex 53**, ICAO Council – 214th Session, Summary Minutes of the Eighth Meeting of 26 June 2018, ICAO document C-MIN 214/8, 23 July 2018, paras 120 *et seq.*

<sup>201</sup> *Ibid.*, para. 124.

<sup>202</sup> See, e.g., **Vol. V, Annex 28**, Decision of the ICAO Council on the Preliminary Objections in the Matter “United States and 15 European States”, 16 November 2000, in which the Council ruled on each of the three preliminary objections separately.

4 votes in favour, 23 votes against, and 6 abstentions. The end result was the rejection of “the Preliminary Objection” and affirmation of the Council’s competence to consider the Applications of Qatar on the merits.

#### D. THE DECISION OF THE ICAO COUNCIL

3.32 The ICAO Council formally adopted its “Decision . . . on the Preliminary Objection” three days after the hearing, on 29 June 2018<sup>203</sup>.

3.33 The ICAO Council’s Decision does not contain any reasons—nor could it, of course, given the wholesale absence of deliberation. It amounts to no more than a short, negative answer to the Preliminary Objections, stating simply that “the preliminary objection of the Respondents is not accepted”<sup>204</sup>.

#### **Section 3. The procedure adopted by the ICAO Council violated fundamental requirements of due process and the ICAO Rules**

3.34 The procedure followed by the ICAO Council in discharging its judicial functions was not in keeping with fundamental standards applicable in any international judicial proceeding. The defects from which the procedure suffered, while legally distinct, may be grouped into the following three categories:

- (a) Grave and manifest violations of principles so fundamental to the very essence of any judicial process that their absence entails that there was no judicial process to speak of—in particular, failure to hold

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<sup>203</sup> Vol. V, Annex 52, ICAO Council Decision.

<sup>204</sup> *Ibid.*

deliberations and render a reasoned decision, and violation of the principle of equality of arms (Subsection A)<sup>205</sup>;

(b) Egregious abdication by the ICAO Council of its judicial functions, in violation of the Chicago Convention (Subsection B)<sup>206</sup>; and

(c) Violation by the ICAO Council of its duty to act in conformity with the ICAO Rules (Subsection C)<sup>207</sup>.

3.35 These violations, individually and cumulatively, demonstrate ICAO's failure to discharge its judicial function in this case and render the Decision in respect of the ICAO Application null and void.

#### A. GRAVE AND MANIFEST VIOLATIONS OF FUNDAMENTAL PRINCIPLES OF DUE PROCESS

##### *1. Requirement to hold deliberations as a collegial formation*

3.36 The requirement to hold deliberations after having heard the Parties—where a hearing is held, as was the case in the ICAO Council here—is essential for judicial bodies to function in a collegial manner: collective debate is inherent in a plurality decision<sup>208</sup>. A collegial judicial formation cannot be reduced into as many individual opinions, separately formed, of its members. Rather, there must be a deliberative process. That is what differentiates judicial proceedings from a public opinion poll.

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<sup>205</sup> See below, paras 3.36-3.58.

<sup>206</sup> See below, paras 3.59-3.63.

<sup>207</sup> See below, paras 3.64-3.65

<sup>208</sup> See, e.g., **Vol. VI, Annex 124**, D. Bowett, J. Crawford, I. Sinclair & A. Watts, "Efficiency of Procedures and Working Methods: Report of the Study Group established by the British Institute of International and Comparative Law as a contribution to the UN Decade of International Law", (1996) 45 *The International Court of Justice: Efficiency of Procedures and Working Methods* 1, paras 46 and 47.

3.37 Yet, as the minutes of the ICAO Council meeting of 26 June 2018 show, the ICAO Council failed to engage in any deliberations before proceeding to vote by secret ballot.

3.38 As already described at paragraph 3.22 above, the Appellants had raised two separate and *distinct* Preliminary Objections.

3.39 At the ICAO Council session of 26 June 2018, the Representative of Mexico “proposed that the ICAO Council proceed directly to a vote by secret ballot in order to take a decision *on each of the Respondents’ preliminary objections* with respect to Application (A) and Application (B)”<sup>209</sup>.

3.40 Reacting to the suggestion by the President that the question to be put to a vote would conflate the two distinct objections into one, counsel for the Appellants sought to clarify the importance for the ICAO Council of properly understanding, and ruling on, each Preliminary Objection separately and in turn:

“As accepting either one of those preliminary objections had the effect of disposing of the case here and now, [counsel] suggested that the appropriate wording of the question for the secret ballot . . . would be ‘Do you accept either one of the two preliminary objections formulated by the Respondents in respect of each of the Applications?’”<sup>210</sup>

3.41 Yet, the President, directing the decision-making process, ultimately conflated into one the two Preliminary Objections. He did so on the basis that

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<sup>209</sup> **Vol. V, Annex 53**, ICAO Council – 214th Session, Summary Minutes of the Eighth Meeting of 26 June 2018, ICAO document C-MIN 214/8, 23 July 2018, para. 106 (emphasis added).

<sup>210</sup> *Ibid.*, para. 121.

Article 5(1) of the ICAO Rules, as read out to the ICAO Council by the Director of the ICAO Bureau of Legal and External Affairs, referred to “a preliminary objection” (singular)<sup>211</sup>. On this basis, the President, acting alone, concluded—*without any further discussion, decision or vote by the ICAO Council*—that “in essence for each of Qatar’s Application (A) and Application (B) the Respondents had a preliminary objection for which they provided two justifications”<sup>212</sup>.

3.42 Immediately thereafter, and expressly eschewing any deliberations, the ICAO Council proceeded to a vote by way of secret ballot (despite the Appellants’ request for a roll call with open votes) on what the ICAO Council characterized as “the Preliminary Objection”<sup>213</sup> (singular).

3.43 By proceeding in this fashion, the ICAO Council failed to take any clear position on Qatar’s argument (extensively debated in the written pleadings, and discussed further below in Chapter IV) that to the extent that the Appellants’ Preliminary Objections related to the admissibility of Qatar’s claims, they could not be considered as a preliminary matter at all, and could only be considered at the stage of the ICAO Council’s consideration of the merits<sup>214</sup>. This further confirms that the ICAO Council failed to grasp or engage with the legal character of the objections before it.

3.44 Both at the hearing and in the written pleadings, the arguments presented on both sides were extensive, complex, and undoubtedly novel for the ICAO Council. In these circumstances, that a decision was taken immediately

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<sup>211</sup> *Ibid.*, para. 122.

<sup>212</sup> *Ibid.*, para. 123.

<sup>213</sup> *Ibid.*, para. 124.

<sup>214</sup> **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, paras 22-32.

after hearing the Parties and without *any* deliberations at all (or so much as asking questions of the Parties) may only indicate that the result had been pre-judged, possibly because the ICAO Council representatives were acting on instructions from their governments rather than exercising a judicial function<sup>215</sup>.

3.45 Unsurprisingly in light of the procedure followed, as discussed below, no reasons were provided by the ICAO Council in its Decision. Indeed, no reasons *could* be provided by the ICAO Council given the absence of any deliberation between members of the ICAO Council on the Preliminary Objections.

## 2. Requirement to deliver a reasoned decision

3.46 A fundamental requirement of due process is that judicial bodies give the necessary reasons in support of their decisions. This serves as a safeguard against arbitrary decisions: “Absence of reasons—or of adequate reasons—unavoidably creates the impression of arbitrariness”<sup>216</sup>. A reasoned decision serves to show the parties that their case has effectively been considered. And only a reasoned decision is susceptible to permit an appellate court properly to understand the essence of the decision below.

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<sup>215</sup> This possibility is borne out by the minutes of the Council proceedings concerning the dispute between India and Pakistan, which reveal that some members of the Council wanted to defer rendering a decision because they wished to await instructions from their governments: **Vol. V, Annex 27**, ICAO Council – 74th Session, Minutes of the Fifth Meeting, ICAO document 8987-C/1004, 28 July 1971, pp. 42-46. That members of the Council might in the decision-making process seek instructions from their governments is something that commentators point to in assessing the judicial functions of the Council: **Vol. VI, Annex 126**, G. F. Fitzgerald, “The Judgment of the International Court of Justice in the Appeal Relating to the Jurisdiction of the ICAO Council”, (1974) 12 *Canadian Yearbook of International Law* 153, p. 169.

<sup>216</sup> H. Lauterpacht, *The Development of International Law by the International Court* (reprinted ed., 1982), p. 39, see generally pp. 37-43.

3.47 One might say that the requirement to provide reasons is even more important in the case of the ICAO Council than it is for full-time, exclusively judicial bodies. The requirement that reasons be provided serves to dispel the risk that judicial decisions rendered under Article 84 are taken in an arbitrary manner or for reasons which do not withstand legal scrutiny.

3.48 Various international rules of procedure treat the absence of reasons as a ground of invalidity of an offending decision. Thus, the ILC Draft Convention on Arbitral Procedure describes a failure to state reasons as a “serious departure from a fundamental rule of procedure”, denial of which is a ground for nullification<sup>217</sup>. Likewise, under the ICSID Convention<sup>218</sup>, a failure to provide reasons is a ground for nullification of an award.

3.49 The elementary duty to provide reasons is also embodied in the ICAO Rules themselves, which do not permit the ICAO Council to arrive at a decision without providing reasons. Article 5 of the ICAO Rules provides that “if a preliminary objection has been filed, the ICAO Council, after hearing the parties, shall decide the question as a preliminary issue”<sup>219</sup>. This must be read together with Article 15 of the Rules, which states that decisions of the ICAO Council “shall be in writing and *shall* contain . . . the conclusions of the ICAO Council together with its reasons for reaching them”<sup>220</sup>. This fundamental duty

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<sup>217</sup> **Vol. II, Annex 5**, ILC, Commentary on the Draft Convention on Arbitral Procedure adopted by the ILC at its Fifth Session, document A/CN.4/92 (1955), Art. 30 and commentary thereto.

<sup>218</sup> ICSID Convention, adopted on 18 March 1965, 575 *UNTS* 159, entered into force on 14 October 1966, Art. 52(1)(e).

<sup>219</sup> **Vol. II, Annex 6**, ICAO Rules, Art. 5(4).

<sup>220</sup> *Ibid.*, Art. 15(2)(v).

has been complied with in recent decisions of the ICAO Council<sup>221</sup>. That this duty applies to decisions on preliminary objections and decisions on the merits alike was expressly confirmed in a working paper circulated by the Secretary-General of ICAO to the members of the ICAO Council before the hearing of the Appellants' Preliminary Objections<sup>222</sup>.

3.50 The ICAO Council did not provide any reasons in its Decision as to why or how it came to the conclusion that the Appellants' Preliminary Objections should be rejected; nor did it explain how or why the ICAO Council took the view that the dispute between the Parties came within its jurisdiction. To the contrary, the ICAO Council rendered a one-line decision devoid of any statement of grounds or reasons to support it.

3.51 The Decision consists solely of a conclusory declaration to the effect that “the Preliminary Objection” (in the singular) “of the Respondents is not accepted”. It is not even possible to ascertain from the face of the Decision what the substance of the two Preliminary Objections raised by the Appellants was, since the Decision merely records that the Appellants' position was “that the Council lacks jurisdiction to resolve the claim raised . . . or in the alternative that [their] claims are inadmissible”<sup>223</sup>.

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<sup>221</sup> See, e.g., **Vol. V, Annex 28**, Decision of the ICAO Council on the Preliminary Objections in the Matter “United States and 15 European States”, 16 November 2000.

<sup>222</sup> **Vol. V, Annex 50**, Working Paper in respect of Application (A), ICAO document C-WP/14778, 23 May 2018, para. 5.3; see also **Vol. V, Annex 51**, ICAO Presentation, “Informal briefing of the Council on the Settlement of Differences”, by Dr. Jiefang Huang, Director of ICAO Legal and External Relations Bureau, 19 June 2018, p. 8.

<sup>223</sup> **Vol. V, Annex 52**, ICAO Council Decision, p. 2.

3.52 Given the absence of any deliberations within the ICAO Council before voting, the rationale and legal reasoning underlying the ICAO Council's Decision to reject the Appellants' Preliminary Objections are simply unknown.

3.53 Each of the two Preliminary Objections was capable of disposing of Qatar's complaint at the threshold. On the face of the record, the ICAO Council failed to comprehend this. In any event, there is no indication that it took it into account or even considered it in determining the Preliminary Objections. The approach adopted is not just inconsistent with the ICAO Council's own previous practice<sup>224</sup>, but also serves to underline the wholly deficient character of the proceedings.

*3. The principle of equality of the parties and respect for the right to have a reasonable opportunity to be heard*

3.54 The principle of equality of arms is of foundational importance from a due process perspective. It is also of universal reach, applying to all types of judicial and arbitral proceedings<sup>225</sup>.

3.55 The principle is articulated in many sources of international law, including for example in the ILC Draft Convention on Arbitral Procedure and Model Rules on Arbitral Procedure<sup>226</sup>, as well as in Article 14(1) of the International Covenant on Civil and Political Rights, which guarantees the

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<sup>224</sup> See **Vol. V, Annex 28**, Decision of the Council on the Preliminary Objections in the Matter: United States and 15 European States, 16 November 2000, in which the Council ruled on each of the three preliminary objections separately.

<sup>225</sup> B. Cheng, *General Principles of Law as applied by International Courts and Tribunals* (2006), p. 290.

<sup>226</sup> **Vol. II, Annex 5**, ILC, Draft Convention on Arbitral Procedure adopted by the ILC at its Fifth Session, document A/CN.4/92 (1955), Art. 14 and see Art. 30 and commentary thereto; **Vol. II, Annex 7**, ILC, Model Rules on Arbitral Procedure adopted by the ILC at its Tenth Session, document A/CN.4/SER.A/1958/Add.1 (1958), Preamble.

principle of equality in judicial proceedings by providing that “all persons shall be equal before the courts and tribunals”<sup>227</sup>. The principle requires in particular that:

“the same rights be granted to all parties, and there must be a constant drive to equalize eventual unevenness among the Parties to the extent that it may influence the possibility of a fair outcome of the trial. . . . The principle of equality *in judicio* is so evident and indispensable for modern legal thinking that it could well be termed a principle of ‘natural law of judicial proceedings.’”<sup>228</sup>

3.56 In its Advisory Opinion on *Judgments of the Administrative Tribunal of the ILO upon Complaints made against UNESCO*, the Court observed that this principle “follows from the requirements of good administration of justice”<sup>229</sup>. Subsequently, the Court held that “the equality of the parties to the dispute must remain the basic principle for the Court”<sup>230</sup>. Most recently, the Court has recognized that “the principle of equality in the proceedings before the Court [is] required by its inherent judicial character and by the good administration of justice”<sup>231</sup>.

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<sup>227</sup> International Covenant on Civil and Political Rights, adopted 16 December 1966, 999 UNTS 171, entered into force on 23 March 1976, Art. 14(1).

<sup>228</sup> R. R. Kolb, “General Principles of Procedural Law”, in A. Zimmerman and C. Tomuschat (eds) *Statute of the International Court of Justice* (2<sup>nd</sup> ed., 2012), p. 877.

<sup>229</sup> *Judgments of the Administrative Tribunal of the I.L.O. upon complaints made against U.N.E.S.C.O., Advisory Opinion, I.C.J. Reports 1956*, p. 86.

<sup>230</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 26, para. 31.

<sup>231</sup> *Judgment No.2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development, Advisory Opinion, I.C.J. Reports 2012*, p. 30, para. 47.

3.57 The principle requires a fair balance between the parties, which should be given equal, sufficient opportunities to present their case<sup>232</sup>. This applies with equal force to multiparty proceedings such as the present one. In some instances, fairness may compel a degree of differential treatment as between the parties<sup>233</sup>. Thus, where a claim is brought by one State against more than one State (as was the case with Qatar’s claims before ICAO), particular attention is required to the proper balancing of the written pleadings allowed and the time for oral presentations. In these circumstances, the practice of the Court has been to require the applicant / claimant to speak first, followed by the individual respondents, each of whom is given sufficient time to address the complaint<sup>234</sup>.

3.58 By contrast, in the present case, the four Appellants in respect of Application (A), and the three States in respect of Application (B), treated as a single party, were given the same portion of a (very limited) envelope of time as Qatar to present oral argument. This was notwithstanding the fact that each of the four States was appearing as a respondent in its own right and was represented by its own Agent. Moreover, the Appellants were required to address Applications (A) and (B) together, although Saudi Arabia was not even a party in Application (B).

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<sup>232</sup> See **Vol. II, Annex 18**, UNCITRAL Arbitration Rules 2013, Art. 17, which provides that an “arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case”.

<sup>233</sup> R. R. Kolb, “General Principles of Procedural Law”, in A. Zimmerman and C. Tomuschat (eds) *Statute of the International Court of Justice* (2<sup>nd</sup> ed., 2012), p. 877.

<sup>234</sup> S. Talmon, “Article 43”, in A. Zimmerman and C. Tomuschat (eds) *Statute of the International Court of Justice* (2<sup>nd</sup> ed., 2012), p. 1133, para. 108.

## B. THE ICAO COUNCIL’S ABDICATION OF ITS DUTY TO INTERPRET THE CHICAGO CONVENTION

3.59 The ICAO Council incorrectly required 19 votes to uphold the Preliminary Objections, out of 33 members entitled to vote. That is more than a majority of the eligible votes (which properly totals 17).

3.60 Article 52 of the Chicago Convention provides that “[d]ecisions of the Council shall require approval by a majority of its members”. This requirement presupposes that all members of the Council are entitled to vote. Indeed, this provision is to be read in the light of Articles 53 and 84 of the same Convention and Article 15(5) of the ICAO Rules, which provide—entirely properly—that no member of the ICAO Council can vote in the consideration of a dispute to which it is a party.

3.61 These provisions read together properly mean that the majority required in the present case was of ICAO Council Members entitled to vote (17 of 33 States entitled to vote), not of all ICAO Council Members (19 of 36 States). A contrary interpretation runs counter to the plain terms of Article 52 of the Chicago Convention, which requires only a “majority”, not a “super-majority” (in circumstances where several States are not eligible to vote), or a “quasi unanimity” (in circumstances where only 20 States are entitled to vote for example). A contrary interpretation would also mean that the ICAO Council might find itself unable to render a decision in circumstances where fewer than 19 States were eligible to vote. In such circumstances, Article 52 of the Chicago Convention would have no *effet utile*; in fact the provision would be deprived

of any *effet* at all. An interpretation that deprives a treaty provision of its effectiveness is obviously to be avoided<sup>235</sup>.

3.62 In the present case, in taking the position that the majority of all members of the ICAO Council would be required, the ICAO Council acknowledged, but effectively abdicated, its duty to rule on the requests for clarification formulated by the Appellants, who expressly called for a decision on this point<sup>236</sup>. Instead, the President deferred to the Director of the Bureau of Legal Affairs, who read out Article 52 of the Chicago Convention and “recited to the Council the factual historical records of previous Council decisions”, while expressly *disclaiming* that it was the role of the Bureau “to provide its interpretation of the relevant rules”<sup>237</sup> but rather the ICAO Council’s duty to do so in accordance with Article 84 of the Chicago Convention. Yet, there was no discussion, deliberation, or indeed decision by members of the Council on the point. Rather, the Council immediately proceeded to the holding of a secret ballot.

3.63 In requiring 19 votes in that manner, the ICAO Council abdicated its judicial function by entrusting its duty to interpret Article 52 of the Chicago

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<sup>235</sup> See *Lighthouses Case between France and Greece, Judgment, 1934, P.C.I.J., Series A/B, No 62*, p. 27; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 35, para. 66; *Aegean Sea Continental Shelf (Greece v. Turkey), Judgment, I.C.J. Reports 1978*, p. 22, para. 52; *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 25, para. 51.

<sup>236</sup> **Vol. V, Annex 53**, ICAO Council – 214th Session, Summary Minutes of the Eighth Meeting of 26 June 2018, ICAO document C-MIN 214/8, 23 July 2018, paras 111 *et seq.*

<sup>237</sup> **Vol. V, Annex 53**, ICAO Council – 214th Session, Summary Minutes of the Eighth Meeting of 26 June 2018, ICAO document C-MIN 214/8, 23 July 2018, paras 112 and 114. See **Vol. II, Annex 1**, Chicago Convention, Art. 84.

Convention to a unit of the ICAO Secretariat, the Bureau of Legal and External Affairs—and this notwithstanding a specific motion for a decision submitted by the Appellants to the ICAO Council. This is yet another example of the Council’s misapprehension of the duties entailed by its judicial function under the Chicago Convention.

### C. REQUIREMENT TO ACT IN CONFORMITY WITH APPLICABLE PROCEDURAL RULES

3.64 As noted by Judge Lachs in his Declaration in the *India v. Pakistan* case, “contracting States have the right to expect that the Council will faithfully follow these [procedural] rules”, which he noted “are enacted to be complied with”<sup>238</sup>.

3.65 The ICAO Council nevertheless departed from a number of procedural requirements set forth in the Chicago Convention and the ICAO Rules:

- (a) As described above, the ICAO Council incorrectly required 19 votes to uphold the Preliminary Objections, out of 33 members entitled to participate in the vote, even though Article 52 of the Chicago Convention provides only that a mere “majority” is needed<sup>239</sup>.
- (b) As also described above, the ICAO Council failed to give any reasons for the decision it had taken, in contravention of Article 15 of the Rules.

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<sup>238</sup> Declaration of Judge Lachs in Appeal Relating to the Jurisdiction of the ICAO Council (*India v. Pakistan*), Judgment, I.C.J. Reports 1972, pp. 74-75.

<sup>239</sup> See above, paras 3.59-3.63.

(c) The ICAO Council also incorrectly applied its own rules of procedure<sup>240</sup>. Rule 40 provides that “[a]ny Member of the Council may introduce a motion or amendment”. Rule 45 further provides that “with the exception of motions and amendments relative to nominations, no motion or amendment shall be voted on, unless it has been seconded”. At the ICAO Council session of 26 June 2018, the Representative of Mexico proposed that the ICAO Council proceed to a vote “*on each of the Respondents’ preliminary objections* with respect to Application (A) and Application (B)”<sup>241</sup>. That proposal was seconded by the Representative of Singapore<sup>242</sup> and approved by the ICAO Council<sup>243</sup>. As already discussed, however, the ICAO Council then proceeded to a secret ballot on a supposed “preliminary objection” as a single plea, and not as two separate preliminary objections as set forth in the motion. The President’s decision to put to a vote a question relating to a “preliminary single objection” was neither introduced nor seconded by a Member of the ICAO Council as required by the ICAO Rules. The Decision is accordingly vitiated at its foundation.

#### **Section 4. Conclusion: The Decision is null and void *ab initio***

3.66 As the facts set out above demonstrate, there can be no doubt that the ICAO Council failed to proceed in accordance with fundamental principles of judicial procedure and due process.

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<sup>240</sup> **Vol. II, Annex 17**, ICAO, Rules of Procedure for the Council, ICAO document 7559/9, 2013.

<sup>241</sup> **Vol. V, Annex 53**, ICAO Council – 214th Session, Summary Minutes of the Eighth Meeting of 26 June 2018, ICAO document C-MIN 214/8, 23 July 2018, para. 106 (emphasis added).

<sup>242</sup> *Ibid.*, para. 107.

<sup>243</sup> *Ibid.*, para. 108.

3.67 Unlike the earlier *India v. Pakistan* case, the procedural irregularities that vitiated the Decision here are such as to prejudice in a “fundamental way the requirements of a just procedure”<sup>244</sup>. These irregularities were grave, fundamental, and widespread, such that the Decision may be regarded as non-existent. The Court is respectfully invited to make a declaration to that effect.

3.68 Indeed, the manner in which a decision is reached by the ICAO Council is fundamental to assessing its validity, quite separately from the merits. President Nagendra Singh put it as follows:

“If the Council reached a decision in utter disregard of all proper norms which go to the root of the functioning of international organizations, apart from violating the mandatory requirements for arriving at a judicial decision, it would be legitimate to draw the conclusion that the Council’s decision was void.”<sup>245</sup>

3.69 That is precisely the contention of the Appellants: the ICAO Council Decision is null and void *ab initio*, as the procedure adopted by the ICAO Council was manifestly flawed and in violation of fundamental principles of due process.

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<sup>244</sup> *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, Judgment, I.C.J. Reports 1972, p. 69, para. 45.

<sup>245</sup> *Dissenting Opinion of Judge Nagendra Singh, Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, Judgment, I.C.J. Reports 1972, p. 166, para. 7.

## CHAPTER IV

### THE ICAO COUNCIL IS ABLE TO RULE UPON OBJECTIONS TO ADMISSIBILITY AS A PRELIMINARY MATTER

4.1 When exercising judicial functions pursuant to Article 84 of the Chicago Convention, the ICAO Council is obliged to approach issues of its competence in the same way as any other international judicial body. As the Court observed in *Border and Transborder Armed Actions* in respect of the exercise of its own functions as a judicial organ, certain conditions must exist in order that it may exercise jurisdiction over a dispute:

“[F]irst, that the dispute before it is a legal dispute, in the sense of a dispute capable of being settled by the application of principles and rules of international law, and secondly, that the Court has jurisdiction to deal with it, and that that jurisdiction is not fettered by any circumstance rendering the application inadmissible.”<sup>246</sup>

As that passage demonstrates, it is well-established in international law that an international court, adjudicatory body or other entity exercising judicial functions must, in assessing at the threshold its competence (i.e., its ability as a matter of law) to adjudicate upon a dispute submitted to it, not only ascertain that it possesses jurisdiction over the dispute, but also must consider the admissibility of the claims submitted to it.

4.2 The two requirements of the existence of jurisdiction and the admissibility of claims are thus an inherent and integral part of the international judicial function in international law. Where a court or tribunal finds that it is without jurisdiction over a claim, it must dismiss the application. Likewise, to

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*Border and Transborder Armed Actions (Nicaragua v. Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988, p. 91, para. 52.*

the extent that a court or tribunal concludes that a claim is inadmissible for whatever reason affecting the possibility or propriety of its deciding a dispute, it may be compelled to decline to exercise such jurisdiction as it may possess to decide the dispute<sup>247</sup>. This power of a court or tribunal to determine its own jurisdiction, and the admissibility of claims before it, is part of its inherent power as a judicial body and thus requires no articulation in any rule or Statute.

4.3 As already discussed in Chapter I, above, in the proceedings before the ICAO Council, the Appellants raised two Preliminary Objections in accordance with Article 5 of the ICAO Rules as to the lack of competence of the ICAO Council to adjudicate upon Qatar's claims. Each objection was made on the basis that the ICAO Council was without jurisdiction over Qatar's claims, and in the alternative, that Qatar's claims were inadmissible.

4.4 In its Response before the ICAO Council, Qatar did not attempt to suggest that a respondent State is entirely precluded from raising objections to the admissibility of a claim submitted to the ICAO Council, but argued that, under Article 5 of the Rules, to the extent that the Appellants' Preliminary Objections went to the admissibility of Qatar's claims, they could not be raised as a preliminary matter, but could only be raised when the merits of those claims were being considered by the ICAO Council.

4.5 It took the position that Article 5(1) of the Rules "mandates that preliminary objections shall lie only to jurisdiction. It does not permit

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<sup>247</sup> J. Crawford, *Brownlie's Principles of Public International Law* (8<sup>th</sup> ed., 2012), p. 693; see also Y. Shany, "Chapter 36: Jurisdiction and Admissibility", in C. Romano *et al* (eds.), *The Oxford Handbook of International Adjudication* (2012), p. 787; R. Jennings and R. Higgins, "General Introduction", in A. Zimmerman *et al* (eds.), *The Statute of the International Court of Justice* (2<sup>nd</sup> ed., 2012), pp. 12-13.

preliminary objections to admissibility”<sup>248</sup>, and, as a consequence, argued that the Appellants’ objections to the admissibility of Qatar’s claims could only be raised in the merits phase:

“The ICAO Rules for the Settlement of Differences do not give the Council the authority to consider issues of admissibility at the preliminary objection phase. The Respondents are not, of course, precluded from making admissibility submissions in their counter-memorials . . .”<sup>249</sup>

4.6 As discussed further below, that interpretation of the Rules, and Qatar’s restrictive view as to the limited ability of respondent States to raise – and of the ICAO Council to rule upon – all matters relating to its competence as a matter of both jurisdiction and admissibility by way of preliminary objection, is fundamentally flawed.

4.7 As discussed in Chapter III above, however, in light of the summary manner in which the ICAO Council dealt with the preliminary objections raised by the Appellants, it did not take any position in this regard. That is a result of the ICAO Council’s decision to subsume all of the objections raised into a single issue, put to a single vote in its Decision on each Application<sup>250</sup>. By doing so, the ICAO Council failed to differentiate between either the two separate Preliminary Objections raised, or as between the Appellants’ invocation of objections to both jurisdiction and admissibility in respect of each Preliminary Objection.

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<sup>248</sup> **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, para. 15.

<sup>249</sup> *Ibid.*, para. 22.

<sup>250</sup> See above, paras 3.29-3.31.

4.8 As set out in Chapters V and VI below, the Appellants maintain their objections to the competence of the ICAO Council to adjudicate upon the merits of the disagreements submitted to it by Qatar. Those objections continue to be made both as a matter of the limits of the ICAO Council's jurisdiction and as regards the admissibility of Qatar's claims.

4.9 To the extent that Qatar maintains its position that questions of admissibility cannot be resolved as preliminary objections, this issue will arise and may require resolution by the Court *in limine* as a logically prior question to its consideration of the substance of the Appellants' objections to the competence of the ICAO Council. This is so notwithstanding the ICAO Council's complete failure in its Decision to engage or grapple with the issue.

4.10 By way of introduction to the issue (and also as background to the discussion of the substance of the Appellants' objections to jurisdiction and admissibility in Chapters V and VI), Section 1 discusses the distinction between objections to jurisdiction and objections to admissibility. Section 2 then explains why Qatar's position that the ICAO Council is unable to deal with objections to admissibility by way of preliminary objection is fundamentally flawed.

**Section 1. The distinction between objections to jurisdiction and objections to admissibility in international procedural law**

4.11 In international procedural law, the distinction between objections to jurisdiction and objections to admissibility as matters challenging the competence of an international court, tribunal or adjudicative body to adjudicate on claims submitted to it is well established and well developed. The notions of objections to jurisdiction (Subsection A) and objections to admissibility

(Subsection B) are examined in turn, before attention turns to the manner in which the Court has applied the distinction in practice (Subsection C).

#### A. THE NOTION OF OBJECTIONS TO JURISDICTION

4.12 Taking first the notion of objections to jurisdiction, it is elementary that the contentious jurisdiction of the Court, and of every international court or tribunal or other body exercising jurisdiction over inter-State disputes, is based upon the consent of the parties.

4.13 As has been consistently recognized by the present Court and the Permanent Court before it, it is a fundamental and well-established principle of international law that the jurisdiction of an international court or tribunal is based on consent and that such a body may only adjudicate a dispute between States insofar as they have consented to the exercise of such jurisdiction.

4.14 That principle was recognized from early in its existence by the Permanent Court in its decision in *Mavrommatis Palestine Concessions*, where it observed that: “its jurisdiction is limited, . . . is invariably based on the consent of the respondent and only exists in so far as this consent has been given”<sup>251</sup>.

4.15 The consensual nature of its own contentious jurisdiction has likewise been repeatedly affirmed by the current Court. For example, in *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and United States)*, the Court reaffirmed the “well-established principle of international law embodied in the Court’s Statute, namely, that the Court can only exercise

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<sup>251</sup> *Mavrommatis Palestine Concessions*, 1924, P.C.I.J., Series A, No. 2, p. 16.

jurisdiction over a State with its consent.”<sup>252</sup> Similarly, in its decision on preliminary objections in *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, the Court reiterated that its jurisdiction under its Statute “is always based on the consent

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*Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and United States of America), Preliminary Question, Judgment, I.C.J. Reports 1954*, p. 32; see also *ibid.*, p. 33 (“Where . . . the vital issue to be settled concerns the international responsibility of a third State, the Court cannot, without the consent of that third State, give a decision on that issue”). See also *Continental Shelf (Libyan Arab Jamahiriya/Malta), Application to Intervene, Judgment, I.C.J. Reports 1984*, p. 25, para. 40; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 431, para. 88; *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, I.C.J. Reports 1990*, pp. 114-116, paras 54-56 and p. 122, para. 73; and *Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, pp. 259-262, paras 50-55. See also *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71: “The consent of States, parties to a dispute, is the basis of the Court’s jurisdiction in contentious cases”; part of that passage was quoted and referred to as representing a “fundamental principle” in the *Application for Revision and Interpretation of the Judgment of 24 February 1982 in Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Tunisia v. Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1985*, p. 216, para. 43; see also *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 24, para. 31; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 157, para. 47. In *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 23, para. 28, the Court referred to “the fundamental rule, repeatedly reaffirmed in the Court’s jurisprudence, that a State cannot, without its consent, be compelled to submit its disputes with other States to the Court’s adjudication.”

of the parties”<sup>253</sup>, and stated that it “has jurisdiction in respect of States only to the extent that they have consented thereto”<sup>254</sup>.

4.16 The principle applies not only to the Court, but equally to all courts and tribunals exercising jurisdiction over disputes between States on the international plane. It applies fully to the ICAO Council insofar as it exercises judicial functions under Article 84 of the Chicago Convention. Its logical and necessary corollary is that a State is not obliged to allow its disputes to be submitted to international judicial settlement without its consent.

4.17 A further important consequence of the fundamental principle of consent as the basis for international jurisdiction is that where the jurisdiction of a court or tribunal is based on a compromissory clause in a treaty, its jurisdiction is necessarily limited and circumscribed by the terms of the relevant provision. It is that provision which constitutes and embodies the consent of

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<sup>253</sup> *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, pp. 31-32, para. 64; and see similarly *ibid.*, pp. 51-52, para. 125, where the Court referred to “the principle that its jurisdiction always depends on the consent of the parties”; see also *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*, pp. 124-125, para. 131. Similarly, in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, p. 456, para. 120, the Court observed that “the jurisdiction of the Court derives from the consent of the parties”.

<sup>254</sup> *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 32, para. 65; and see *ibid.*, p. 39, para. 88: “[The Court’s] jurisdiction is based on the consent of the parties and is confined to the extent accepted by them . . .”; *Oil Platforms (Islamic Republic of Iran v. United States of America), Merits, Judgment, I.C.J. Reports 2003*, pp. 182-183, para. 42; Cf. *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1995*, p. 23, para. 43 (“the Court’s jurisdiction can only be established on the basis of the will of the Parties, as evidenced by the relevant texts”).

those States parties bound by it to the exercise of jurisdiction by the relevant body. In this regard, in *Armed Activities on the Territory of the Congo*, the Court emphasized that:

“its jurisdiction is based on the consent of the parties and is confined to the extent accepted by them . . . . When that consent is expressed in a compromissory clause in an international agreement, any conditions to which such consent is subject *must be regarded as constituting the limits thereon*”.<sup>255</sup>

4.18 As a result of the fundamental principle that consent is the basis of jurisdiction, it is always open to a respondent State in a contentious case to raise (whether as a preliminary matter, or otherwise) an objection on the basis that a dispute falls outside the scope of the jurisdiction of the court or tribunal to which it has been submitted. Such an objection turns on whether the objecting State has consented to the settlement by the court or tribunal of the particular dispute<sup>256</sup>. The key question is thus the scope of the consent to jurisdiction of the parties.

4.19 Such objections to jurisdiction are often made on the basis that the dispute in question falls outside the scope of the objecting State’s consent to jurisdiction *ratione materiae* (i.e., that the subject-matter of the dispute is not

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<sup>255</sup> *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, I.C.J. Reports 2006*, p. 39, para. 88 (emphasis added). See also *ibid.*, p. 32, para. 65 (“When a compromissory clause in a treaty provides for the Court’s jurisdiction, that jurisdiction exists only in respect of the parties to the treaty who are bound by that clause and within the limits set out therein”).

<sup>256</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, p. 456, para. 120.

one which falls within the limits placed on the scope of disputes which the State has consented to have adjudicated)<sup>257</sup>.

#### B. OBJECTIONS TO ADMISSIBILITY

4.20 In addition to the category of objections to jurisdiction in the narrow sense, it is well-established in international judicial practice that there exists a further category of objections (“objections to admissibility”) which may be raised by a respondent State<sup>258</sup>. If upheld, such objections constitute a reason for the relevant court, tribunal, or body to refrain from exercising jurisdiction over a dispute that it would otherwise possess.

4.21 As regards this latter category of objections, in *Oil Platforms*, the Court observed that they:

“normally take the form of an assertion that, even if the Court has jurisdiction and the facts stated by the applicant State are assumed to be correct, nonetheless there are reasons why the Court should not proceed to an examination of the merits.”<sup>259</sup>

4.22 The Court’s understanding of the scope of the category of objections to admissibility has evolved over the years. For instance, in *Northern Cameroons*, a decision rendered prior to the adoption of the Court’s 1972 Rules of Court, the Court appeared to envisage the existence of a tri-partite division of

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<sup>257</sup> See, e.g., *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia), Preliminary Objections*, I.C.J. Reports 1996, pp. 614-617, paras 27-33.

<sup>258</sup> Or, in an exceptional case, by an applicant – see *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and United States of America), Preliminary Question, Judgment*, I.C.J. Reports 1954, p. 29.

<sup>259</sup> *Oil Platforms (Islamic Republic of Iran v. United States of America), Merits, Judgment*, I.C.J. Reports 2003, p. 177, para. 29.

preliminary objections, referring to “objections to jurisdiction or to admissibility or based on other grounds.”<sup>260</sup>

4.23 Similarly, in the *Lockerbie* cases, the Court again appeared to envisage the existence of three categories of preliminary objections. Relying upon the distinction drawn in Article 79(1) of the current (1978) Rules of Court to objections to “the jurisdiction of the Court or to the admissibility of the application, or other objection . . . the decision upon which is requested before any further proceedings on the merits”, the Court observed that the “field of application *ratione materiae* [of Article 79(1)] is thus not limited solely to objections regarding jurisdiction or admissibility.”<sup>261</sup>

4.24 In more recent cases, the category of objections to admissibility has been framed by the Court as encompassing all objections to the exercise of jurisdiction by the Court that do not as such directly concern a lack of jurisdiction of the Court in the narrow sense. In its judgment on preliminary objections in *Croatian Genocide*, the Court observed that the difference between objections to jurisdiction and objections to admissibility “is well

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<sup>260</sup> *Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963, p. 27. See also Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 10; Pajzs, Csáky, Esterházy, Judgment, 1936, P.C.I.J., Series A/B, No. 68, p. 51; Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Tunisia v. Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1985, p. 216, para. 43.*

<sup>261</sup> *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998, p. 26, para. 47; Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Preliminary Objections, I.C.J. Reports 1998, p. 131, para. 46 (emphasis added).*

recognized in the practice of the Court,”<sup>262</sup> and went on to discuss the similarities between the two categories, and the particular factors which distinguish them. The Court explained, that:

“In either case, the effect of a preliminary objection to a particular claim is that, if upheld, it brings the proceedings in respect of that claim to an end; so that the Court will not go on to consider the merits of the claim. If the objection is a jurisdictional objection, then since the jurisdiction of the Court derives from the consent of the parties, this will most usually be because it has been shown that no such consent has been given by the objecting State to the settlement by the Court of the particular dispute. A preliminary objection to admissibility covers a more disparate range of possibilities.”<sup>263</sup>

4.25 In that latter regard, having quoted the passage from its earlier decision in *Oil Platforms* set out at paragraph 4.21, above, the Court explained that:

“Essentially such an objection [as to admissibility] consists in the contention that there exists a legal reason, even when there is jurisdiction, why the Court should decline to hear the case, or more usually, a specific claim therein. Such a reason is often of such a nature that the matter should be resolved *in limine litis* . . .”<sup>264</sup>

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<sup>262</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, p. 456, para. 120.

<sup>263</sup> *Ibid.*

<sup>264</sup> *Ibid.*, quoted in part in *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 123, para. 48. A similar conclusion had previously been reached by the Permanent Court: see *Panevezys-Saldutiskis Railway, 1939, P.C.I.J., Series A/B, No. 29*, p. 16.

4.26 The examples of objections to admissibility given by the Court include objections based on the rules applicable in the context of claims brought by way of diplomatic protection as to nationality of claims or requiring the prior exhaustion of local remedies<sup>265</sup>, circumstances in which the parties had agreed “to use another method of pacific settlement” and considerations relating to the “mootness of the claim”<sup>266</sup>, such as those which were found to exist in *Northern Cameroons*, and the *Nuclear Tests* cases, such that it would be improper for the court or tribunal to exercise its judicial function. To these examples can be added objections to the competence of the court or tribunal based on the *res judicata* effect of a prior judgment<sup>267</sup>, and abuse of process<sup>268</sup>.

#### C. OBJECTIONS TO JURISDICTION AND ADMISSIBILITY IN INTERNATIONAL JUDICIAL PRACTICE

4.27 Accordingly, as recognized by the Court in *Croatian Genocide*, a clear theoretical distinction can thus be drawn between objections to jurisdiction and objections to admissibility. The former relate to the scope of the jurisdiction of the relevant adjudicatory body (which in turn takes as its lodestar the consent of

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<sup>265</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, p. 456, para. 120; see e.g., *Nottebohm Case, Second Phase, Judgment, I.C.J. Reports 1955*, p. 16; *Interhandel Case, Preliminary Objections, Judgment, I.C.J. Reports 1959*, p. 26; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Preliminary Objections, Judgment, I.C.J. Reports 2007*, pp. 599-601, paras 40-48.

<sup>266</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, p. 456, para. 120.

<sup>267</sup> *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 123, para. 48 and p. 124, para. 53.

<sup>268</sup> *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment of 6 June 2018*, p. 42, paras 150 and 151.

the parties). By contrast, objections as to the admissibility of a claim go to the wider question of whether, in the circumstances of the case, the court or tribunal or other relevant body can (or should, as a matter of judicial discretion) exercise such jurisdiction as it in fact possesses, whether over a particular claim, or over the dispute as a whole.

4.28 The Court has not always regarded it as necessary to clearly state whether a particular objection is one implicating its jurisdiction (in the narrow sense) over a particular claim, or one which raises an issue of admissibility, or belongs to some inchoate third category<sup>269</sup>. In *Northern Cameroons* for instance, the Court did not find it “necessary to consider all the objections, nor to determine whether all of them are objections to jurisdiction or to admissibility or based on other grounds”<sup>270</sup>.

4.29 Nevertheless, the Court has had no hesitation where appropriate in re-characterizing an objection and examining its substance, without dwelling on any error of characterization which the objecting State might have committed<sup>271</sup>. For instance, in *Armed Activities on the Territory of the Congo*,

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<sup>269</sup> See, e.g., *Northern Cameroons (Cameroon v. United Kingdom)*, *Preliminary Objections*, *I.C.J. Reports 1963*, p. 27; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, *Jurisdiction and Admissibility*, *I.C.J. Reports 1995*, para. 43. For the practice of the Permanent Court, see e.g., *Mavrommatis Palestine Concessions, 1924, P.C.I.J., Series A, No. 2*, p. 10; and *Pajzs, Csáky, Esterházy, Judgment, 1936, P.C.I.J., Series A/B, No. 68*, p. 51.

<sup>270</sup> *Northern Cameroons (Cameroon v. United Kingdom)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 1963*, p. 27.

<sup>271</sup> See in particular *Interhandel Case, Preliminary Objections, Judgment*, *I.C.J. Reports 1959*, p. 26; *Oil Platforms (Islamic Republic of Iran v. United States of America)*, *Judgment*, *I.C.J. Reports 2003*, p. 177, para. 29; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 2008*, p. 456, para. 120; *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 2016 (I)*, p. 123, para. 48.

the Court made clear its view that an objection based on failure to comply with a requirement of negotiation contained in a compromissory clause – and indeed any objection “based on non-fulfilment of the preconditions set out in the compromissory clauses”<sup>272</sup> relied upon to found its jurisdiction to hear a particular dispute – was one going to jurisdiction, rather than the admissibility of the application<sup>273</sup>.

4.30 Finally, it bears noting that the two categories of objections to jurisdiction and objections to admissibility are not mutually exclusive; there is no reason of principle why the same considerations may not give rise to issues as to the competence of a tribunal to adjudicate a dispute both from the viewpoint of jurisdiction and from that of admissibility. For instance, in *Croatian Genocide*, the Court observed that Serbia’s objection based on the applicability *ratione temporis* of the Genocide Convention was “presented as relating both to the jurisdiction of the Court and to the admissibility of the claim”<sup>274</sup>.

4.31 Accordingly, even if an objection raised by a party is not regarded as one affecting the existence of the jurisdiction of a particular court or tribunal to

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<sup>272</sup> *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 39, para. 88.

<sup>273</sup> *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 39, para. 88; See also *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment of 6 June 2018*, p. 42, paras 150-151 (an objection of abuse of process is one of admissibility).

<sup>274</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, p. 457, para. 121 and p. 460, para. 129; see previously, e.g., *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia), Preliminary Objections, I.C.J. Reports 1996*, p. 612, para. 23.

adjudicate upon a particular dispute as such, it is nevertheless still necessary to examine whether it gives rise to concerns as to the admissibility of the claims submitted.

## **Section 2. The proper scope of preliminary objections before the ICAO Council**

4.32 Article 5 (“Preliminary Objection”) of the ICAO Rules expressly regulates and sets out a procedure for the raising of preliminary objections by a respondent State. It provides:

“1. If the respondent questions the jurisdiction of the Council to handle the matter presented by the applicant, he shall file a preliminary objection setting out the basis of such objection.

2. Such preliminary objection shall be filed in a special pleading at the latest before the expiry of the time-limit set for delivery of the counter-memorial.

3. Upon a preliminary objection being filed, the proceedings on the merits shall be suspended and . . . time shall cease to run from the moment the preliminary objection is filed until the objection is decided by the Council.

4. If a preliminary objection has been filed, the Council, after hearing the parties, shall decide the question as a preliminary issue before any further steps are taken under these Rules.”

4.33 Pursuant to this article, the ICAO Council is empowered, indeed required, to rule upon objections as to its jurisdiction and as to the admissibility of claims submitted to it as a preliminary issue, without requiring a specific basis in the ICAO Rules to do so.

4.34 First, simply as a matter of the ordinary words of Article 5 of the Rules, there is no basis for Qatar’s suggestion that the ICAO Council can, at the preliminary objections phase, decide only objections to jurisdiction. Pursuant to Article 5(1), the preliminary objection procedure foreseen by Article 5 is applicable whenever a respondent “*questions* the jurisdiction of the Council to handle the matter presented by the applicant”<sup>275</sup>.

4.35 On their face, those words are apt to cover objections as to both jurisdiction and admissibility. It is significant in this connection that elsewhere in Article 5, the category of objections by which a respondent State “questions the jurisdiction of the Council to handle” a particular matter submitted to it is referred to using the entirely generic term “preliminary objection”.

4.36 Article 5 thus provides no support for the position taken by Qatar before the ICAO Council<sup>276</sup>, that only objections to jurisdiction must be dealt with as a preliminary issue and that, by contrast, objections to admissibility can only be considered at the merits stage. In particular, there is no textual foothold for Qatar’s position; tellingly, the only argument it was able to invoke in support of its position was the absence in Article 5 of the ICAO Rules of any express reference to questions of admissibility<sup>277</sup>.

4.37 As a consequence, before the ICAO Council, Qatar sought to invoke in aid of its position the different formulation of Article 79(1) of the current Rules of Court<sup>278</sup>, which refers to objections “to the jurisdiction of the Court or to the

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<sup>275</sup> **Vol. II, Annex 6**, ICAO Rules, Art. 5(1) (emphasis added).

<sup>276</sup> See above, paras 4.4 and 4.5.

<sup>277</sup> **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, para. 15.

<sup>278</sup> *Ibid.*, para. 15.

admissibility of the application, or other objection the decision upon which is requested before any further proceedings on the merits”.

4.38 Qatar’s argument in this regard is flawed, however.

4.39 The superficial comparison of the ICAO Rules and the Court’s Rules of Court ignores the fact that Article 36(6) of the Court’s Statute, which forms the underpinning for Article 79(1) of the Rules of Court, refers only to the Court’s ability to decide on a dispute as to whether the Court has *jurisdiction*, and makes no reference to objections to the admissibility of a claim. In this regard, although the formulation is different, it is analogous to Article 5(1) of the Rules.

4.40 It further bears emphasis that the distinction between jurisdiction and admissibility was only introduced into the Rules of Court in 1972<sup>279</sup>. Prior to 1972, Article 62(1) of the original 1946 Rules of Court provided only that “[a] preliminary objection must be filed by a party at the latest before the expiry of the time-limit fixed for the delivery of its first pleading”.

4.41 Notwithstanding the lack of any initial reference in the Rules of Court to objections to admissibility, however, the Court has, since its inception, considered that it was empowered to address all objections to admissibility or

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The equivalent provision of the Court’s 1946 Rules of Court (Art. 62(1)), provided that, “A preliminary objection must be filed by a party at the latest before the expiry of the time-limit fixed for the delivery of its first pleading”.

which otherwise have a preliminary character as preliminary matters before any further proceedings on the merits<sup>280</sup>.

4.42 In taking this course, the Court followed the practice of the Permanent Court. For instance, in *Panevezys-Saldutiskis Railway*, decided under Article 62(1) of the 1936 Rules of the Permanent Court<sup>281</sup> (which in this regard was in substantially similar form to Article 62 of the Court's 1946 Rules) the Permanent Court observed that Article 62:

“covers more than objections to the jurisdiction of the Court. Both the wording and the substance of the Article show that it covers any objection of which the effect will be, if the objection is upheld, to interrupt further proceedings in the case, and which it will therefore be appropriate for the Court to deal with before enquiring into the merits.”<sup>282</sup>

4.43 It further bears underlining that, as Milde observes, the ICAO Rules, as originally adopted by the ICAO Council in 1957 and unchanged since (save for minor amendments to Article 29 adopted in 1975 relating to languages), were “drafted in close alignment”<sup>283</sup> with the Court's Rules of Court. The version in force at the relevant time was the 1946 edition, which simply referred to

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<sup>280</sup> See, e.g., *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and United States of America)*, *Preliminary Question, Judgment*, *I.C.J. Reports 1954*, pp. 19 and 27-30; *Nottebohm, Second Phase*, *I.C.J. Reports 1955*, p. 16.

<sup>281</sup> Rules of Court of the PCIJ, Article 62; *Statute and Rules of Court, P.C.I.J., Series D, No. 1 (4<sup>th</sup> ed.)* (1940).

<sup>282</sup> *Panevezys-Saldutiskis Railway, 1939, P.C.I.J., Series A/B, No. 29*, p. 16. See also, previously, *Certain German Interests in Polish Upper Silesia, Preliminary Objections, 1925, P.C.I.J., Series A, No. 6*, pp. 18-19 and 26.

<sup>283</sup> **Vol. VI, Annex 127**, M. Milde, *International Air Law and ICAO* (3<sup>rd</sup> ed., 2016), p. 201.

preliminary objections; the drafters of the ICAO Rules must be taken to have been aware of the Court's consistent practice in this regard.

4.44 The position adopted by Qatar before the ICAO Council was in any case internally contradictory and incoherent. Qatar did not dispute (indeed it accepted) a respondent's right to raise an objection to the admissibility of a claim. Further, and notably, Qatar did not seek to ground the ability to raise objections to admissibility at the merits stage in any other provision of the Rules. Nor did it provide any other explanation of why the ICAO Council should be regarded as barred from considering objections to admissibility as a preliminary matter. Given that considerations of admissibility, if upheld, prevent any determination of the merits<sup>284</sup>, in principle, it is appropriate that an objection to admissibility be determined as a "preliminary issue" in accordance with Article 5(4) of the ICAO Rules, in the same way as an objection to jurisdiction.

4.45 Second, and quite apart from the clear words of Article 5 of the ICAO Rules, the past practice of the ICAO Council shows that it has previously treated objections to the admissibility of claims as preliminary objections and decided them as preliminary issues under Article 5 of the ICAO Rules.

4.46 For instance, in *United States v. 15 European Union Member States* (2000), an objection based on an alleged failure to exhaust local remedies was raised by the respondent States as a preliminary objection<sup>285</sup>. Such an objection

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<sup>284</sup> Cf. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, p. 456, para. 120.

<sup>285</sup> *United States v. 15 European Union Member States* – Preliminary Objections presented by the Member States of the European Union, 18 July 2000, paras 20 and 28.

is undoubtedly one going to the admissibility of a claim, and not to jurisdiction<sup>286</sup>.

4.47 The objection was considered by the ICAO Council as a preliminary matter pursuant to Article 5 of the ICAO Rules, and rejected<sup>287</sup>. At no point was it suggested by either the applicant or the ICAO Council that it was improper for the ICAO Council to adopt such an approach in relation to an objection going solely to the admissibility of the claim<sup>288</sup>.

4.48 A further example is provided by the recent decision of the ICAO Council on preliminary objections in *Brazil v. United States* (2017), in which, in response to Brazil's claims of breach of the Chicago Convention, the United States raised a preliminary objection under Article 5 of the ICAO Rules on the basis of time bar/extinctive prescription<sup>289</sup>. Again, an objection on this basis is

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<sup>286</sup> Cf. *Interhandel Case, Preliminary Objections, Judgment, I.C.J. Reports 1959*, p. 26; and see the *dispositif, ibid.*, p. 30, by which the Court upheld the Third Preliminary Objection of the United States based on non-exhaustion, and held that the Swiss application was “inadmissible” on that basis. See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Preliminary Objections, I.C.J. Reports 2008*, p. 456, para. 120; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Preliminary Objections, I.C.J. Reports 2007*, p. 601, para. 48. See previously *Panevezys-Saldutiskis Railway Case, 1939, P.C.I.J., Series A/B, No. 29*, p. 30 (in particular the authoritative French text of the *dispositif*).

<sup>287</sup> **Vol. III, Annex 24**, ICAO Preliminary Objections, Exhibit 1, Summary Minutes of the Council, Sixth Meeting 161st Session, ICAO document C-MIN 161/6, 16 November 2000, p. 104, operative para. 2.

<sup>288</sup> Qatar's suggestion in its Response before the ICAO Council that the decision of the Council to consider the objection to admissibility based on failure to exhaust local remedies as a preliminary matter was an “error of law” (see **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, para. 23) was unsupported and is without any foundation.

<sup>289</sup> **Vol. V, Annex 29**, Preliminary Objections of the United States In Re the Application of the Federative Republic of Brazil Relating to the Disagreement Arising under the Convention on International Civil Aviation done at Chicago on December 7, 1944, 24 March 2017, pp. 25-26.

properly characterized as one concerning the admissibility of a claim<sup>290</sup>. The United States characterized it as such<sup>291</sup>, and Brazil did not contest that the objection was properly regarded as one going to the admissibility of its claims<sup>292</sup>.

4.49 The United States' objection was dealt with by the ICAO Council under the procedure for preliminary objections foreseen by Article 5 of the ICAO Rules<sup>293</sup>. Although disputing the factual and legal basis for that objection<sup>294</sup>, Brazil did not make any point to the effect that the objection was improperly raised as a preliminary matter or that it could not be dealt with and decided by the ICAO Council as a preliminary matter in accordance with Article 5 of the ICAO Rules.

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<sup>290</sup> See, e.g., *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, *Preliminary Objections, Judgment, I.C.J. Reports 1995*, p. 253, para. 32; and see the formulation of the *dispositif*, *ibid.*, p. 268, para. 72(1)(d).

<sup>291</sup> **Vol. V, Annex 29**, Preliminary Objections of the United States In Re the Application of the Federative Republic of Brazil Relating to the Disagreement Arising under the Convention on International Civil Aviation done at Chicago on December 7, 1944, 24 March 2017, pp. 25-26; see also **Vol. III, Annex 24**, ICAO Preliminary Objections, Exhibit 2, ICAO Council – 211th Session, Summary Minutes of the Ninth Meeting of 21 June 2017, ICAO document C-MIN 211/9, 5 July 2017, paras 26 and 40.

<sup>292</sup> **Vol. V, Annex 30**, Comments by the Federative Republic of Brazil In Re the Preliminary Objection of the United States relating to the Disagreement arising under the Convention on International Civil Aviation done at Chicago on December 7, 1944, 19 May 2017, pp. 11-12; and see **Vol. III, Annex 24**, ICAO Preliminary Objections, Exhibit 2, ICAO Council – 211th Session, Summary Minutes of the Ninth Meeting of 21 June 2017, ICAO document C-MIN 211/9, 5 July 2017, paras 51 and 54.

<sup>293</sup> **Vol. III, Annex 24**, ICAO Preliminary Objections, Exhibit 2, ICAO Council – 211th Session, Summary Minutes of the Ninth Meeting of 21 June 2017, ICAO document C-MIN 211/9, 5 July 2017, paras 49 and 92-93.

<sup>294</sup> *Ibid.*, para. 52.

4.50 In any event, the decision in *Brazil v. United States* is not authority for the proposition that preliminary objections as to admissibility cannot be decided by the ICAO Council as a preliminary issue<sup>295</sup>.

4.51 In particular, the ICAO Council did not decline to rule upon the objection as to the admissibility of Brazil's claim on the basis that it was improperly raised as a preliminary objection. Rather, it in fact proceeded first to vote on whether to accept the preliminary objection<sup>296</sup>. That course of action was taken despite the suggestion of the delegate of the United Kingdom that the ICAO Council should decide that "statements and arguments made by the United States in its Preliminary Objection did not possess, in the circumstances of the case, an exclusively preliminary character and that they may be joined to the merits of the case"<sup>297</sup>, and that this question should be disposed of prior to considering whether to accept the Preliminary Objection<sup>298</sup>.

4.52 It was only after having voted upon whether to accept the preliminary objection as to the admissibility of Brazil's claims raised by the United States (and rejected it by 4 votes to 19, with 11 abstentions)<sup>299</sup>, that the ICAO Council,

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<sup>295</sup> Cf. Qatar's suggestion that in *Brazil v. United States*, the ICAO Council "reverted to the proper application of Article 5 of the Rules for the Settlement of Differences, did not consider the substance of the arguments based on extinctive prescription, [and] did not accept the preliminary objection": **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, para. 24.

<sup>296</sup> **Vol. V, Annex 32**, Decision of the ICAO Council on the Preliminary Objection of the United States in the Matter "Brazil v. United States", 23 June 2017, para. 1; **Vol. III, Annex 24**, ICAO Preliminary Objections, Exhibit 2, ICAO Council – 211th Session, Summary Minutes of the Ninth Meeting of 21 June 2017, ICAO document C-MIN 211/9, 5 July 2017, para. 96.

<sup>297</sup> **Vol. III, Annex 24**, ICAO Preliminary Objections, Exhibit 2, ICAO Council – 211th Session, Summary Minutes of the Ninth Meeting of 21 June 2017, ICAO document C-MIN 211/9, 5 July 2017, para. 92.

<sup>298</sup> *Ibid.*, para. 94.

<sup>299</sup> *Ibid.*, paras 98-99.

after further debate<sup>300</sup>, and having sought the views of the parties<sup>301</sup>, then decided (unanimously), by separate vote, that:

“the statements and the arguments made in the preliminary objection of the Respondent and in the comments of the Applicant not possessing, in the circumstances of the case, an exclusively preliminary character, may be joined to the merits of the case and included in the counter-memorial and any additional pleading.”<sup>302</sup>

4.53 As such, the ICAO Council did not join the objection as to admissibility to the merits<sup>303</sup>; rather, having considered and rejected the objection as a preliminary issue, as required by Article 5(4) of the Rules, it proceeded to make clear that the same arguments could be raised in due course during the merits phase of the proceedings.

4.54 In this connection, it bears noting that Article 5(4) is unequivocal in mandating that all preliminary objections must be decided “as a preliminary issue before any further steps are taken”. In this regard, it differs from the procedural rules of other bodies, for instance Article 79(9) of the Court’s Rules of Court, which permit objections to be dealt with together with the merits where they are found not to “possess, in the circumstances of the case, an exclusively preliminary character”.

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<sup>300</sup> *Ibid.*, paras 100-103.

<sup>301</sup> *Ibid.*, paras 104-106.

<sup>302</sup> *Ibid.*, para. 107, and see **Vol. V, Annex 32**, Decision of the ICAO Council on the Preliminary Objections in the Matter “Brazil v. United States (2016)”, 23 June 2017, para. 2.

<sup>303</sup> Cf. **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, para. 24.

4.55 In its Response, Qatar highlighted this particular characteristic of the Rules<sup>304</sup>. Similarly, at the hearing before the ICAO Council, it expressly accepted the Appellants’ position that Article 5(4) of the ICAO Rules “did not give the Council the option of joining preliminary objections to the merits”<sup>305</sup>.

4.56 Article 5(4) of the ICAO Rules must thus be understood as requiring that the ICAO Council decide all preliminary objections, whether going to jurisdiction or to admissibility, as a preliminary issue before entering into the merits.

### **Section 3. Conclusion**

4.57 In light of the above considerations, the Appellants submit that the ability of the ICAO Council to deal with preliminary objections pursuant to Article 5 of the ICAO Rules extends not only to “pure” jurisdictional objections, but also encompasses objections as to the admissibility of the dispute, or of the claims submitted. In accordance with the ICAO Rules, all objections questioning the “jurisdiction of the Council to handle” a particular disagreement must be decided by the ICAO Council “as a preliminary issue before any further steps are taken” in the proceedings.

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<sup>304</sup> *Ibid.*, para. 15.

<sup>305</sup> **Vol. V, Annex 53**, ICAO Council – 214th Session, Summary Minutes of the Eighth Meeting of 26 June 2018, ICAO document C-MIN 214/8, 23 July 2018, para. 50.

**CHAPTER V**  
**SECOND GROUND OF APPEAL: THE ICAO COUNCIL ERRED IN**  
**FACT AND IN LAW IN NOT ACCEPTING THE FIRST**  
**PRELIMINARY OBJECTION**

**Section 1. Introduction**

5.1 The Appellants' second ground of appeal against the Decision of the ICAO Council of 29 June 2018 is that, in the circumstances of the present case, the ICAO Council is not competent to rule upon the disagreement submitted to it by Qatar in the ICAO Application relating to the Chicago Convention, and that the ICAO Council accordingly erred in its Decision of 29 June 2018 in not accepting the Appellants' First Preliminary Objection and thereby affirming its jurisdiction to proceed to hear the merits of the dispute.

5.2 As noted above in Chapter IV, a single situation may give rise to issues both as to the jurisdiction of the relevant body over the claims submitted to it, and as regards the admissibility of those claims<sup>306</sup>. The First Preliminary Objection is put in two alternative ways, each based on the fact that the jurisdiction of the ICAO Council under Article 84 of the Chicago Convention is limited to disagreements relating to the interpretation or application of the Chicago Convention:

- (a) First, it is raised as an objection to the jurisdiction of the ICAO Council, insofar as, when properly characterized, the real issue in dispute between the Parties cannot be confined to matters relating to the interpretation or application of the Chicago Convention, but concerns the wider dispute between the Parties. That dispute necessarily implicates matters extending far beyond the scope of the

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See above, paras 4.30-4.31.

Chicago Convention, and therefore beyond the limited jurisdiction of the ICAO Council. Issues falling outside that jurisdiction include whether the airspace restrictions adopted by the Appellants are properly characterized as legitimate countermeasures, which in turn inexorably raises the question as to whether Qatar has breached its international obligations.

- (b) Second, and in the alternative, the First Preliminary Objection is raised as going to the admissibility of Qatar's claims. The objection to admissibility is made on the basis that, insofar as final adjudication by the ICAO Council of Qatar's claims would necessarily involve the Council adjudicating upon matters that fall outside the narrow scope of its jurisdiction under the Chicago Convention, as to which the Appellants have not consented to it deciding, it would be incompatible with the fundamental principle of the consensual basis of international jurisdiction, and therefore incompatible with judicial propriety and the ICAO Council's judicial function under Article 84 of the Chicago Convention for the ICAO Council to exercise jurisdiction over Qatar's claims.

5.3 Under Article 84 of the Chicago Convention, jurisdiction is conferred on the ICAO Council to adjudicate only disagreements relating to the interpretation or application of the Chicago Convention. In light of the well-established principle that the contentious jurisdiction of international courts and tribunals over inter-State disputes is consensual, that jurisdiction is limited.

5.4 The dispute submitted by Qatar to the ICAO Council under the ICAO Application, which relates to the alleged breach by the Appellants of their obligations under the Chicago Convention as a result of the airspace

restrictions, however, are only a consequence and manifestation of the underlying dispute between the Parties, as described in Chapter II. As a result, any adjudication by the ICAO Council on Qatar's claims would necessarily require it to adjudicate on matters which do not relate to the interpretation and application of the Chicago Convention within the meaning of its Article 84, and as to which the Appellants (and indeed, Qatar) have manifestly not consented to the ICAO Council (a specialized body concerned principally with safety and standardization in international civil aviation) exercising jurisdiction. Those matters relate in particular to the Appellants' defence that the airspace restrictions were adopted as valid countermeasures under international law, which in turn implicates Qatar's prior breaches of other international obligations relating to non-intervention, measures to combat extremism and terrorism, including its financing, and commitments to refrain from using state-owned media to propagate hate speech and foment instability in the region.

5.5 These broader issues, which are an essential pre-condition to the final disposal of the artificially narrow dispute under the Chicago Convention which Qatar has sought to submit to the ICAO Council for adjudication, mean that the ICAO Council does not have jurisdiction to rule on Qatar's claims; or, in the alternative, that those claims are inadmissible.

5.6 The remainder of the present Chapter is structured as follows: Section 2 discusses the limited scope of the jurisdiction *ratione materiae* of the ICAO Council pursuant to Article 84 of the Chicago Convention. Section 3 then examines in greater detail why adjudication of the disagreement submitted by Qatar to the ICAO Council on its merits would necessarily require the ICAO Council to adjudicate upon matters falling outside its jurisdiction, and which the Appellants have not consented to submit for adjudication by the ICAO Council.

5.7 Sections 4 and 5 then expand upon the two alternative reasons why the ICAO Council is not competent to adjudicate upon Qatar’s claims, such that the ICAO Council should have found either that it was without jurisdiction, or that Qatar’s claims are inadmissible.

5.8 Section 4 sets out the Appellants’ objection to the ICAO Council’s jurisdiction on the basis the “real issue” in dispute is in fact the wider dispute between the Appellants and Qatar relating to Qatar’s breach of its international obligations relating to non-intervention and support of terrorism and extremism, a dispute over which the ICAO Council undoubtedly does not have jurisdiction.

5.9 Section 5 then explains why even if the ICAO Council were to be held to have jurisdiction over Qatar’s narrow claims of breach of the ICAO Convention, it nevertheless is unable to exercise that jurisdiction for reasons of judicial propriety and related to the character of its judicial function, such that it should have declared Qatar’s claims inadmissible.

## **Section 2. The limited jurisdiction of the ICAO Council under Article 84 of the Chicago Convention**

5.10 As already noted, the jurisdiction of the Council to consider disagreements between States parties derives from Article 84 of the Chicago Convention, which provides:

“If any disagreement between two or more contracting States relating to the interpretation or application of this Convention and its Annexes cannot be settled by negotiation, it shall, on the application of any State concerned in the disagreement, be decided by the Council.”

5.11 The jurisdiction of the ICAO Council under Article 84 of the Chicago Convention is limited and circumscribed *ratione materiae* to matters relating to

the “interpretation or application” of the Chicago Convention or its Annexes. That is so, first and foremost, based on the express terms of Article 84, read in the light of the consensual basis for the jurisdiction by international courts and tribunals over inter-State disputes (Subsection A). That interpretation of the ICAO Council’s jurisdiction is confirmed by considerations relating to the narrow and limited functions of ICAO, as defined in its constitutive charter, and its status as a United Nations specialized agency (Subsection B).

A. THE LIMITED JURISDICTION OF THE ICAO COUNCIL PURSUANT TO THE TEXT OF ARTICLE 84 OF THE CHICAGO CONVENTION

5.12 An important consequence of the fundamental principle of consent as the basis for international jurisdiction is that where the jurisdiction of a court or tribunal is based on a compromissory clause in a treaty, it is necessarily limited and circumscribed by the terms of the relevant provision, which constitutes and embodies the consent of those States parties bound by it to the exercise of jurisdiction. As discussed in Chapter IV, in *Armed Activities on the Territory of the Congo*, the Court emphasized that:

“[w]hen a compromissory clause in a treaty provides for the Court’s jurisdiction, that jurisdiction exists only in respect of the parties to the treaty who are bound by that clause and *within the limits set out therein*.”<sup>307</sup>

Similarly, the Court later observed that:

“its jurisdiction is based on the consent of the parties *and is confined to the extent accepted by them* . . . When that consent is expressed in a compromissory

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<sup>307</sup> *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 32, para. 65 (emphasis added).

clause in an international agreement, any conditions to which such consent is subject *must be regarded as constituting the limits thereon.*<sup>308</sup>

5.13 It follows that, in light of the express terms of Article 84 of the Chicago Convention, the jurisdiction of the ICAO Council is limited to disagreements between States parties which a) relate to the “interpretation or application of the Chicago Convention and its Annexes” and which b) “cannot be settled by negotiation”. These limitations, which derive from the clear terms of Article 84 itself, and thus circumscribe the jurisdiction of the ICAO Council, constrain the scope of the ICAO Council’s jurisdiction *ratione materiae*. In addition, seen in the context of the Chicago Convention as a whole, it is clear that Article 84 is restricted to disputes concerning the matters covered by the Chicago Convention, namely, international civil aviation.

5.14 Conversely, it is elementary that the jurisdiction *ratione materiae* of the ICAO Council does not extend to matters outside those expressly referred to in Article 84. In particular, as regards the first limitation identified above, the jurisdiction of the ICAO Council does not extend to disagreements or disputes between States which do not relate to the interpretation or application of the Chicago Convention and its Annexes<sup>309</sup>.

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<sup>308</sup> *Ibid.*, p. 39, para. 88 (emphasis added).

<sup>309</sup> As a consequence, it is manifest that the ICAO Council is without jurisdiction over the claims made by Qatar in its Application and Memorial of breach of “other principles of international law” and “other rules of international law”, including the Charter of the United Nations and the United Nations Convention on the Law of the Sea; see **Vol. III, Annex 23**, ICAO Application, p. 1; **Vol. III, Annex 23**, ICAO Memorial, Secs. (e) and (f).

B. THE LIMITED SCOPE OF JURISDICTION OF THE ICAO COUNCIL UNDER  
ARTICLE 84 IS CONFIRMED BY THE NARROW AND SPECIALIZED FUNCTIONS OF  
ICAO

5.15 The narrow and specific role of ICAO as the United Nations specialized agency with responsibility for matters of civil aviation further confirms the existence of limitations upon the jurisdiction of the ICAO Council in adjudicating upon disagreements submitted to it under Article 84 of the Chicago Convention (and Article 2, Section II of IASTA).

5.16 As noted by the Court in response to the request by the World Health Organization (*WHO*) for an advisory opinion in *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, the limits of the powers of an international organization which is a United Nations specialized agency fall to be ascertained:

“by taking due account not only of the general principle of speciality, but also of the logic of the overall system contemplated by the Charter.”<sup>310</sup>

5.17 As regards the principle of speciality, the Court had earlier explained that:

“international organizations are subjects of international law which do not, unlike States, possess a general competence. International organizations are governed by the ‘principle of speciality’, that is to say, they are invested by the States which create them with powers, the limits of which are a function of the common interests whose promotion those States entrust to them.”<sup>311</sup>

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<sup>310</sup> *Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996*, p. 80, para. 26.

<sup>311</sup> *Ibid.*, p. 78, para. 25.

5.18 Where, as here, the international organization concerned is a United Nations specialized agency, the principle is of paramount importance.

5.19 As the Court went on to explain, any assessment of the powers of a United Nations specialized agency must also take account of the overall system under the United Nations Charter:

“the Charter of the United Nations laid the basis of a ‘system’ designed to organize international co-operation in a coherent fashion by bringing the United Nations, invested with powers of general scope, into relationship with various autonomous and complementary organizations, invested with sectorial powers. The exercise of these powers by the organizations belonging to the ‘United Nations system’ is co-ordinated, notably, by the relationship agreements concluded between the United Nations and each of the specialized agencies.”<sup>312</sup>

5.20 The Chicago Convention, the constitutional document of ICAO, sets out a limited role for ICAO in the field of civil aviation. Pursuant to Article 44, the aims and objectives of ICAO essentially centre around air navigation, the safety of civil aviation, and the promotion of civil aeronautics:

“Article 44 Objectives

The aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to:

- (a) Insure the safe and orderly growth of international civil aviation throughout the world;

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<sup>312</sup> *Ibid.*, p. 80, para. 26.

- (b) Encourage the arts of aircraft design and operation for peaceful purposes;
- (c) Encourage the development of airways, airports, and air navigation facilities for international civil aviation;
- (d) Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;
- (e) Prevent economic waste caused by unreasonable competition;
- (f) Insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines;
- (g) Avoid discrimination between contracting States;
- (h) Promote safety of flight in international air navigation;
- (i) Promote generally the development of all aspects of international civil aeronautics.”

5.21 The specific aims and objectives of ICAO also form the basis for the relationship of ICAO with the wider United Nations system and define its role within that system. Pursuant to Article 1 of the Relationship Agreement between ICAO and the United Nations, the United Nations recognizes ICAO as “the specialized agency responsible for taking such action as may be appropriate under its basic instrument for the accomplishment of the purposes set forth therein.”<sup>313</sup> In other words, the proper functioning of the United

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**Vol. II, Annex 4**, Agreement between the United Nations and the International Civil Aviation Organization, signed at New York on 1 October 1947, 8 *UNTS* 315, Art. 1.

Nations recognizes ICAO (and other agencies) not acting beyond their specific powers as prescribed in their constitutional instrument.

5.22 The constitutional constraints placed upon ICAO as a whole, and therefore upon the ICAO Council, are thus clear and unchallengeable. The ICAO Council cannot exceed its functional bounds.

5.23 Accordingly, in light of the specialized and technical field of operation of ICAO as a whole, the specific jurisdiction of the ICAO Council when exercising judicial functions under Article 84 of the Chicago Convention must be regarded as circumscribed and as limited to matters falling within its particular area of specialization.

5.24 Precisely such limitations are reflected in Article 84 of the Chicago Convention, insofar as the jurisdiction conferred on the ICAO Council is defined as extending only to disagreements relating to the interpretation or application of the Chicago Convention and its Annexes.

5.25 That conclusion is also supported by pragmatic considerations relating to the composition of the ICAO Council and the experience and expertise of the representatives of its Members. In this regard, in his declaration in *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, Judge Lachs observed that the ICAO Council is “composed of experts in other fields than law”<sup>314</sup>. In light of the specialized role of the ICAO Council, and of ICAO as a whole, the representatives of the States members of the ICAO Council are predominantly individuals with experience and expertise in the field of international civil aviation. As a consequence, they normally have no judicial

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<sup>314</sup> Declaration of Judge Lachs, *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, Judgment, *I.C.J. Reports 1972*, p. 75.

experience or wider experience in general international law and are thus ill-equipped to resolve complex legal disputes between States in areas falling outside the narrow and specialist compass of the rules of international law relating to international civil aviation.

5.26 In conclusion, the jurisdiction conferred on the ICAO Council under Article 84 of the Chicago Convention must, in accordance with its express terms, and in light of the specialized functions of ICAO, be interpreted as being strictly restricted to matters relating to the interpretation and application of the Chicago Convention. Conversely, the jurisdiction of the ICAO Council under Article 84 of the Chicago Convention self-evidently does not extend to matters falling outside that narrow compass.

**Section 3. The disagreement submitted by Qatar to the ICAO Council would necessarily require the Council to adjudicate upon matters falling outside its jurisdiction**

5.27 Whilst on its face raising issues of the interpretation and application of the Chicago Convention, the claim submitted to the ICAO Council by Qatar in the ICAO Application concerns only one element of the real dispute between the Parties. As set out in Chapter II above, that dispute involves matters extending far beyond questions relating to the interpretation or application of the Chicago Convention, and which undoubtedly go beyond the constitutional limitations of ICAO's competencies resulting from its aims and purposes.

5.28 The real subject-matter of the dispute between the Parties concerns Qatar's failure to abide by – and indeed Qatar's conduct in reneging on – fundamental obligations of a completely different character, namely those violated by Qatar's ongoing support for and harbouring of terrorists and extremists, its interference in the internal affairs of other States, and its propagation of hate speech through its State-owned and -controlled media. This

conduct violates numerous international obligations, including customary international law, United Nations Security Council Resolutions, and relevant treaties, including the Riyadh Agreements.

5.29 Those matters fall outside the scope of the ICAO Council's jurisdiction under Article 84 of the Chicago Convention.

5.30 Qatar's claims in the ICAO Application are admittedly carefully framed so as only to allege breaches by the Appellants of their obligations under the Chicago Convention as a result of their adoption of the airspace restrictions<sup>315</sup>. Any final adjudication on those claims by the ICAO Council, however, would necessarily and inevitably require the ICAO Council to consider and rule upon matters which undoubtedly fall outside its limited jurisdiction *ratione materiae* under Article 84 of the Chicago Convention, and to venture into areas which extend far beyond the narrow and specialized field of civil aviation. That is because, as also discussed above in Chapter II, the airspace restrictions were adopted by the Appellants as lawful countermeasures in response to Qatar's prior breaches of multiple international obligations arising under customary international law, Security Council Resolutions, and relevant treaties, including the Riyadh Agreements. The applicable law to determine the real dispute between the Parties is thus not within the ICAO Council's competence, nor its expertise; yet the Council would necessarily have to consider these other obligations in order to resolve the dispute before it. Neither is the Council equipped to hear a dispute of this character under its current procedural rules.

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**Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, para. 44.

5.31 As was discussed in Chapter II, it is well-established in international law that, to the extent that the non-performance of an obligation by State A constitutes a valid countermeasure adopted in response to a prior internationally wrongful act of State B, then the wrongfulness of that non-performance is precluded as against State B<sup>316</sup>. As such, in order to adjudicate upon Qatar’s claims in the ICAO Application that the Appellants have breached their obligations under the Chicago Convention through adoption of the airspace restrictions, the ICAO Council would necessarily have to rule upon core elements of that underlying dispute, and in particular the Appellants’ defence to Qatar’s claims on the merits, namely whether, if the airspace restrictions constitute conduct which is inconsistent with their obligations under the Chicago Convention, they constitute lawful countermeasures under customary international law, such that any wrongfulness is precluded.

5.32 However, ruling on the issue of the validity of the Appellants’ claim that the airspace restrictions were adopted as countermeasures would unavoidably require the ICAO Council to rule upon whether the conditions for valid countermeasures under customary international law were fulfilled, first and most obviously the question of whether the airspace restrictions and other measures were adopted in response to a prior internationally wrongful act insofar as Qatar had breached its relevant international obligations.

5.33 Accordingly, the dispute between the Parties raised by Qatar’s claims goes far beyond the limited field of civil aviation, and falls outside the ICAO Council’s limited jurisdiction under Article 84 of the Chicago Convention over disagreements relating to the “interpretation or application” of the Chicago

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<sup>316</sup> See above, paras 2.56-2.62.

Convention and its Annexes. As such, it is not a dispute over which the Appellants have consented to the ICAO Council exercising jurisdiction.

5.34 Before the ICAO Council, Qatar did not suggest that there existed no dispute between the Parties in relation to the Appellants' assertions that Qatar had breached its various international obligations relating to non-interference and support of terrorism and extremism. Nor did it suggest that there existed no dispute as to whether the airspace restrictions were capable of justification on the basis that they constituted lawful countermeasures.

5.35 On the contrary, Qatar's Response before the ICAO Council clearly demonstrates that a dispute undoubtedly exists in both regards. Indeed, Qatar appeared to take the position that the dispute was one that the ICAO Council was competent to adjudicate. Qatar first argued that the question of countermeasures was one for the merits and further appeared to envisage that the ICAO Council would be competent to rule upon that issue at the merits phase:

“the issue of countermeasures and their lawfulness or otherwise is one to be examined on the merits of the case. . . . The State of Qatar submits that the arguments [the Appellants] have raised, and all the exhibits they have provided, in this regard, fall to be considered on the merits, and not at the preliminary objection phase. It goes to their defence on the merits, not to their preliminary objection.

The State of Qatar has already highlighted that [the] Council cannot examine the merits now, and that in

any event the Council can examine any wider question at the stage of the merits.”<sup>317</sup>

5.36 In the very next paragraph, whilst purporting not to respond at that stage to “the allegation that [it] supports terrorism, or terrorism financing, etc”, Qatar went on to outline its position in that regard, as follows:

“At the appropriate later stage of the proceedings (merits) the State of Qatar will provide a robust defence on the facts and in law to the claim of the Respondents, which will show that the actions taken by the Respondents are not lawful countermeasures, or otherwise lawful in international law.”<sup>318</sup>

5.37 Qatar then engaged in a truncated discussion of some of the preconditions for lawful countermeasures under customary international law (as reflected in the work of the ILC on State responsibility)<sup>319</sup>, although it conspicuously omitted to mention the fundamental requirement that countermeasures must be adopted in response to a prior internationally wrongful act, or to explain on what basis the ICAO Council would have jurisdiction to consider this matter<sup>320</sup>. Qatar reiterated, however, that it would:

“show, at the stage of the merits, on the facts and in law, that the conditions for the imposition and

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<sup>317</sup> **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, paras 75-76 (emphasis in original omitted).

<sup>318</sup> *Ibid.*, para. 77 (emphasis in original omitted).

<sup>319</sup> **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, paras 79-81; citing **Vol. II, Annex 13**, ARSIWA, p. 31.

<sup>320</sup> **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, para. 79, although cf. *ibid.*, the quotation of the ILC’s Commentary to the effect that countermeasures are “a response to internationally wrongful conduct”.

continuation of the alleged countermeasures by the Respondents have not been met.”<sup>321</sup>

5.38 At the hearing before the ICAO Council on 26 June 2018, Qatar maintained its position that the ICAO Council could and should rule on the issues relating to countermeasures, suggesting that:

“based on the documents which the Respondents had unfortunately produced as exhibits and the statements they had made in their Statements of preliminary objections and Rejoinders, the matter would be one of the easiest for the Council to decide at that session when it would examine the merits . . .”<sup>322</sup>

5.39 As such, at the very least, Qatar does not deny (and in light of the position adopted by it before the ICAO Council, it is not open to it to deny) that there exists a disagreement between the Parties as to whether the airspace restrictions constitute lawful countermeasures. Yet it has failed to put forward any jurisdictional basis that would permit the ICAO Council to consider and adjudicate these necessary aspects of the dispute between the Parties.

5.40 Further, and despite its efforts to avoid taking a position in this regard, insofar as Qatar asserted that it would in due course “provide a robust defence on the *facts*”<sup>323</sup>, Qatar likewise implicitly acknowledged that there exists a dispute between the Parties as to whether it has breached its other international obligations outside the Chicago Convention. Indeed, given the character of the obligations in question, and the gravity of the breaches alleged by the

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<sup>321</sup> **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, para. 82 (emphasis in original omitted).

<sup>322</sup> **Vol. V, Annex 53**, ICAO Council – 214th Session, Summary Minutes of the Eighth Meeting of 26 June 2018, ICAO document C-MIN 214/8, 23 July 2018, para. 62.

<sup>323</sup> **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, para. 77 (emphasis added).

Appellants as justifying the adoption of countermeasures, it would be surprising if Qatar were to deny that there existed any dispute in that regard, and thereby accept that it had committed the serious breaches of fundamental obligations under international law relied upon by the Appellants as the basis for the adoption of countermeasures.

5.41 Neither the question of Qatar's prior breaches of its relevant international obligations, nor the issue as to whether the airspace restrictions qualify as valid countermeasures, falls within the circumscribed and specialist scope of the jurisdiction of the ICAO Council under Article 84 the Chicago Convention. As a result, and in any event, final resolution of Qatar's claim submitted to the ICAO Council would necessarily and inevitably involve the ICAO Council ruling on the dispute between the Parties relating to matters clearly falling outside the limited jurisdiction conferred upon it pursuant to Article 84 of the Chicago Convention.

5.42 That consideration has necessary implications for the competence of the ICAO Council to adjudicate upon the claims submitted by Qatar. It was not appropriate for the ICAO Council simply to disregard its manifest lack of jurisdiction over key elements of the dispute, notably its lack of jurisdiction *ratione materiae* over the Appellants' claims of breach by Qatar of its international obligations arising otherwise than under the Chicago Convention. As already noted, those issues form the basis for the Appellants' defence that the airspace restrictions, relied upon by Qatar as in breach of the Chicago Convention, constitute lawful countermeasures such that any wrongfulness is precluded.

## **Section 4. The law applicable in determining the jurisdiction *ratione materiae* of the ICAO Council**

### A. INTRODUCTION

5.43 Central to the Appellants' Preliminary Objection in this regard is the question of whether, properly characterized, the dispute between the Parties is one falling within the jurisdiction *ratione materiae* of the ICAO Council. As explained above, the jurisdiction of the ICAO Council is extremely narrow and is limited by the express terms of Article 84 and the object and purpose of the Chicago Convention to "any disagreement between two or more contracting States relating to the interpretation or application" of the Convention and its Annexes.

5.44 As this section explains, it is a requirement for the ICAO Council – and hence now for the Court – to determine the subject-matter of the dispute before it, and then to determine whether that subject-matter falls within the narrow scope of the compromissory clause in Article 84 of the Chicago Convention. In so doing, the ICAO Council must ascertain for itself the "real issue" in dispute. In undertaking that assessment, the ICAO Council is not bound by the characterization of the dispute put forward by the claimant party.

5.45 The "real issue" doctrine recognizes that the proper characterization of a dispute is a matter for objective assessment; as of course it must be in order to achieve its objective, which is of paramount jurisdictional importance. It is intended, for instance, to prevent a dispute from being broken artificially into discrete morsels that happen to suit the jurisdictional needs of the complaining party; or to prevent a party from portraying as a mere incidental issue what is in fact the core of the dispute but lies outside the confined jurisdictional mandate of the forum.

5.46 The Appellants' position is that the ICAO Council erred in dismissing the Preliminary Objections before it. The ICAO Council has no jurisdiction to rule upon the real issue between the Parties, which, as is explained in Chapter II above and further in Subsection D below, concerns Qatar's failure to comply with its international obligations, and the measures taken by the Appellants in order to seek to induce Qatar to comply with those obligations.

B. THE "REAL ISSUE" TEST REQUIRES AN OBJECTIVE CHARACTERIZATION OF THE SUBJECT-MATTER OF THE DISPUTE

5.47 Before determining that it had jurisdiction, the ICAO Council ought to have ascertained and legally characterized the subject-matter of the dispute before it and determined whether this dispute fell within its jurisdiction *ratione materiae* under Article 84 of the Chicago Convention. Such an approach is required by the Court's consistent jurisprudence, which characterizes the subject matter of a dispute according to the objective "real issue" test, and which is applicable in determining whether a dispute falls within the relevant jurisdiction *ratione materiae*. The object of the inquiry is to determine whether or not the dispute is within the subject-matter(s) in respect of which States have given their consent to jurisdiction.

5.48 In its early cases, the Court did not need to go further than the claimants' pleadings in determining the subject-matter of the dispute before it. Thus in the *Interhandel* case, the Court held that "the subject of the present dispute is indicated in the Application and in the Principal Final Submission of the Swiss Government."<sup>324</sup> Similarly, in *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, the Court considered the content of

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<sup>324</sup> *Interhandel Case (Switzerland v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1959*, p. 21. See also *Right of Passage over Indian Territory (Portugal v. India), Merits, Judgment, I.C.J. Reports 1960*, pp. 33-34.

Pakistan's Application and Complaint to the ICAO Council, concluding that "there can . . . be no doubt about the character of the case presented by Pakistan to the Council."<sup>325</sup> In many cases, this will be a sufficient inquiry.

5.49 In the *Nuclear Tests* cases, the Court did not have the benefit of pleadings from all parties before it (since the respondent did not participate in either proceeding). The Court proceeded to analyse the submissions of the applicants in each case, in order to ascertain the "real issue" in dispute, while making clear that the test was an objective one:

"Thus, it is the Court's duty to isolate the real issue in the case and to identify the object of the claim. It has never been contested that the Court is entitled to interpret the submissions of the parties, and in fact is bound to do so; this is one of the attributes of its judicial functions."<sup>326</sup>

5.50 The Court went on to explain that:

"In the circumstances of the present case, although the Applicant has in its Application used the traditional formula of asking the Court 'to adjudge and declare' . . . the Court must ascertain the true object and purpose of the claim and in doing so it cannot confine itself to the ordinary meaning of the words used; it must take into account the Application as a whole, the arguments of the Applicant before the Court, the diplomatic exchanges brought to the

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<sup>325</sup> *Appeal Relating to the Jurisdiction of the ICAO Council, Judgment, (India v. Pakistan), Judgment, I.C.J. Reports 1972, p. 59, para. 22 and p. 66, para. 36.*

<sup>326</sup> *Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974, p. 262, para. 29; Nuclear Tests (New Zealand v. France), Judgment, I.C.J. Reports 1974, p. 466, para. 30.*

Court's attention, and public statements made on behalf of the applicant Government.”<sup>327</sup>

5.51 In those cases, the Court's enquiry was for the limited purpose of ascertaining that the applicants were not in fact seeking declaratory judgments. The Court went on to hold that the claims were inadmissible as their object had been rendered moot by subsequent developments.

5.52 In two later cases, the Court was called upon to characterize the dispute before it in order to ascertain whether that dispute was excluded by reservations to the compulsory jurisdiction of the Court under Article 36(2) of the Statute. In both cases, the Court was not content to limit its inquiry to the applicants' submissions only.

5.53 In *Aegean Sea (Greece v. Turkey)*, Greece requested the Court to determine its entitlement to a continental shelf arising from certain islands. But the Court did not accept the subject-matter of the claim as it was put in Greece's Application. In that case, the limits of the Court's jurisdiction were set out by Greece's reservation in case of disputes “relating to the territorial status of Greece”, which Turkey had invoked<sup>328</sup>. Greece sought to characterize the dispute narrowly as being merely one of delimitation of the continental shelf, and not one relating to “territorial status”<sup>329</sup>. The Court rejected Greece's characterization of the dispute, finding that the “very core of the present dispute”, its “basic character” and the “very essence” of it, concerned questions

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<sup>327</sup> *Nuclear Tests (Australia v. France)*, Judgment, I.C.J. Reports 1974, p. 263, para. 30; *Nuclear Tests (New Zealand v. France)*, Judgment, I.C.J. Reports 1974, p. 467, para. 31.

<sup>328</sup> *Aegean Sea Continental Shelf (Greece v. Turkey)*, Judgment, I.C.J. Reports 1978, pp. 16-17 and 34, paras 39-40 and 81. Greece's reservation is reproduced at pp. 20-21, para. 48.

<sup>329</sup> *Ibid.*, pp. 34-35, para. 82.

of the territorial status of certain islands that Greece claimed would generate a continental shelf<sup>330</sup>. While the Court may not have used the language of “real issue” from the *Nuclear Tests* cases, it nevertheless applied the test in substance. In doing so, the Court took into account not only Greece’s Application, but also the diplomatic correspondence, and it noted the position of Turkey, that Greece’s Application concerned a territorial dispute, was “evident from the documents before the Court”<sup>331</sup>. The Court thus held that its jurisdiction over the whole dispute was excluded by Turkey’s invocation of Greece’s reservation.

5.54 That the “real issue” test was to be used in considering whether a dispute was excluded by a reservation was then confirmed in the *Fisheries Jurisdiction* case, which relied on the *Nuclear Tests* formulation<sup>332</sup>. The Court was called upon to determine whether the matter in dispute fell within the terms of Canada’s reservation<sup>333</sup>, as Spain had sought to characterize the dispute in such a way as to avoid its effect. The Court explained that ascertaining the “subject of the dispute” should begin with an examination of the Application. It went on to hold:

“However, it may happen that uncertainties or disagreements arise with regard to the real subject of the dispute with which the Court has been seised, or to the exact nature of the claims submitted to it. In such cases the Court cannot be restricted to a consideration of the terms of the Application alone

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<sup>330</sup> *Ibid.*, pp. 35-37, paras 83, 87 and 88.

<sup>331</sup> *Ibid.*

<sup>332</sup> *Fisheries Jurisdiction (Spain v. Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, pp. 448-449, para. 30.

<sup>333</sup> *Ibid.*, p. 448, para. 29.

nor, more generally, can it regard itself as bound by claims of the Applicant.”<sup>334</sup>

Rather than being confined to Spain’s Application and submission, the Court considered that it was required to determine “on an objective basis the dispute dividing the parties”, taking into account the oral and written pleadings of both parties<sup>335</sup>.

5.55 The Court has thus made it clear that its role in determining the real issue in dispute is an objective one. The articulation of the subject-matter of the dispute in the application will provide the starting point, but the Court must also take into account the respondent’s characterization and arguments, as well as other relevant material. This approach has continued to be followed in the most recent decisions of the Court.

C. THE “REAL ISSUE” TEST MAY DETERMINE JURISDICTION *RATIONE MATERIAE*

5.56 Where the parties disagree as to the “real issue” of the dispute, the court or tribunal – and in this case the ICAO Council – has a positive duty to determine objectively what the dispute before it is, and then to decide whether that dispute falls within its jurisdiction. If the “real issue” falls outside the court or tribunal’s jurisdiction *ratione materiae*, it must determine that it does not have jurisdiction over the dispute, even if on the claimant’s characterization alone the dispute would fall within its jurisdiction. It is not enough merely to ask whether the claim as formulated falls within the four corners of a jurisdictional instrument. For to do so would unduly ignore that a dispute, as it actually exists and not as one party alone would have it, involves facts, rights, and obligations, asserted by all litigants, not just the claimant.

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<sup>334</sup> *Ibid.*

<sup>335</sup> *Ibid.*, pp. 448-450, paras 30 and 33.

5.57 The most straightforward application of the “real issue” test is to determine the subject-matter of a claim for the purposes of determining whether it falls within the compromissory clause giving rise to the court or tribunal’s jurisdiction. This was the case in a number of recent proceedings before the Court<sup>336</sup>.

5.58 To take one of those cases, in its decision in *Bolivia v. Chile* the Court reiterated and applied the “real issue” test in order to determine its subject-matter jurisdiction, holding that:

“It is for the Court itself, however, to determine on an objective basis the subject-matter of the dispute between the parties, that is, to ‘isolate the real issue in the case and to identify the object of the claim’ (*Nuclear Tests (Australia v. France)*, *Judgment*, *I.C.J. Reports 1974*, p. 262, para. 29; *Nuclear Tests (New Zealand v. France)*, *Judgment*, *I.C.J. Reports 1974*, p. 466, para. 30). In doing so, the Court examines the positions of both parties, ‘while giving particular attention to the formulation of the dispute chosen by the [a]pplicant’ (*Fisheries Jurisdiction (Spain v. Canada)*, *Jurisdiction of the Court*, *Judgment*, *I.C.J. Reports 1998*, p. 448, para. 30; see also *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, *Preliminary Objections*, *Judgment*, *I.C.J. Reports 2007 (II)*, p. 848, para. 38). . . . To identify the

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See *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, *Preliminary Objection*, *Judgment*, *I.C.J. Reports 2015*, p. 602 para. 26; see also *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, *Preliminary Objections*, *Judgment*, *I.C.J. Reports 2016*, pp. 26-27, para. 50 (“[W]hether there exists an international dispute is a matter for objective determination’ by the Court . . . [which] ‘must turn on an examination of the facts.’”); *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *Preliminary Objections*, *Judgment* of 6 June 2018, p. 17, para. 48 (“it is for the Court itself to determine on an objective basis the subject-matter of the dispute between the parties, by isolating the real issue in the case and identifying the object of the claim”).

subject-matter of the dispute, the Court bases itself on the application, as well as the written and oral pleadings of the parties. In particular, it takes account of the facts that the applicant identifies as the basis for its claim.”<sup>337</sup>

5.59 In that case, Chile had submitted that Bolivia had framed the Application in an artificially narrow fashion, because the relief sought by Bolivia would lead to negotiations with a judicially predetermined outcome on matters falling outside of the Court’s jurisdiction. However, the Court determined that the subject-matter of the dispute concerned whether Chile was obligated to negotiate in good faith Bolivia’s sovereign access to the Pacific Ocean, holding that this could be determined without touching on the question of Bolivia’s substantive right to sovereign access to the sea<sup>338</sup>. Accordingly, Chile’s preliminary objection was rejected.

5.60 In some cases, however, the application of the “real issue” test will result in the court or tribunal declining jurisdiction. That was the case in the *Aegean Sea* case discussed above. It also occurred in the *Chagos Islands* case between Mauritius and the United Kingdom<sup>339</sup>, in which the “real issue” test was applied by a tribunal constituted under Part XV of the United Nations Convention on the Law of the Sea (*UNCLOS*). The tribunal declined to

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<sup>337</sup> See *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile), Preliminary Objection, Judgment, I.C.J. Reports 2015*, p. 602, para. 26.

<sup>338</sup> *Ibid.*, pp. 604-605, paras 33-34.

<sup>339</sup> *In the matter of the Chagos Marine Protected Area Arbitration (Republic of Mauritius v. United Kingdom of Great Britain and Northern Ireland)*, PCA Case No. 2011-03, Award, 18 March 2015, p. 90 para. 220. Pursuant to **Vol. II, Annex 9**, United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982, 1833 *UNTS* 3, Art. 288, the jurisdiction of a court or tribunal constituted under Part XIV is limited to “any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with [Part XV]”.

exercise jurisdiction in respect of certain claims by Mauritius, determining that the “real issue” between the parties concerned a dispute over territorial sovereignty, rather than the interpretation or application of the Convention<sup>340</sup>.

5.61 Mauritius brought arbitral proceedings seeking to contest the Marine Protection Area created by the United Kingdom under UNCLOS on the basis that the United Kingdom was not the competent “coastal State”, because (so Mauritius argued) it lacked sovereignty over the islands. The tribunal concluded that the parties’ disagreement was “simply one aspect of a larger dispute” concerning sovereignty over the Chagos archipelago<sup>341</sup>. The Tribunal observed that:

“[W]here a dispute concerns the interpretation or application of the Convention, the jurisdiction of a court or tribunal pursuant to Article 288(1) extends to making such findings of fact or ancillary determinations of law as are necessary to resolve the dispute presented to it (*see Certain German Interests in Polish Upper Silesia, Preliminary Objections, Judgment of 25 August 1925, P.C.I.J. Series A, No. 6, p. 4 at p. 18*). Where the ‘real issue in the case’ and the ‘object of the claim’ (*Nuclear Tests (New Zealand v. France), Judgment, I.C.J. Reports 1974, p. 457 at p. 466, para. 30*) do not relate to the interpretation or application of the Convention, however, an incidental connection between the dispute and some matter regulated by the Convention is insufficient to bring the dispute, as a whole, within the ambit of Article 288(1).

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<sup>340</sup> *In the matter of the Chagos Marine Protected Area Arbitration (Republic of Mauritius v. United Kingdom of Great Britain and Northern Ireland)*, PCA Case No. 2011-03, Award, 18 March 2015, pp. 69, 74-75 and 88, paras 158, 170, 172 and 212.

<sup>341</sup> *Ibid.*, p. 88, para. 212.

... The Parties' dispute regarding sovereignty over the Chagos Archipelago does not concern the interpretation or application of the Convention."<sup>342</sup>

5.62 Accordingly, the tribunal found that it did not have jurisdiction to address the dispute before it.

5.63 The "real issue" test has most recently been applied by the UNCLOS Annex VII tribunal in the *South China Sea* case between the Philippines and China<sup>343</sup>. It held that:

"Where a dispute exists between parties to the proceedings, it is further necessary that [the dispute in question] be identified and characterised. The nature of the dispute may have significant jurisdictional implications, including whether the dispute can fairly be said to concern the interpretation or application of the Convention or whether subject-matter based exclusions from jurisdiction are applicable. Here again, an objective approach is called for, and the Tribunal is required to 'isolate the real issue in the case and to identify the object of the claim.' [*Nuclear Tests (New Zealand v. France)*, para. 30.] In so doing it is not only entitled to interpret the submissions of the parties, but bound to do so."<sup>344</sup>

5.64 The *Chagos Islands* and *South China Sea* cases illustrate that it is not uncommon for a dispute to have different constituent parts, particularly in the context of the law of the sea. The possibility that such a dispute may fall outside a tribunal's competence under UNCLOS is expressly recognized by Article

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<sup>342</sup> *Ibid.*, p. 90, paras 220-221.

<sup>343</sup> *In the matter of an arbitration before an Arbitral Tribunal constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea (Republic of the Philippines v. People's Republic of China)*, PCA Case No. 2013-19, Award on Jurisdiction and Admissibility, 29 October 2015, p. 58, para. 150.

<sup>344</sup> *Ibid.*

298(1)(a)(i) of UNCLOS, pursuant to which a State may opt to exclude entirely from the scope of application of the dispute resolution provisions in Section 2 of Part XV of that Convention, including the otherwise applicable obligation to submit the dispute to conciliation in accordance with Section 2 of Annex V to the extent that the dispute is one “that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory”<sup>345</sup>.

5.65 Nevertheless, that provision does not purport to answer the question as to whether a tribunal has jurisdiction to determine a dispute touching upon UNCLOS that involves consideration of a territorial dispute not otherwise covered by the Convention. That question falls to be resolved by application of the “real issue” test, which is of general application.

5.66 In the *South China Sea* award, the tribunal considered that the Philippines’ claims, which concerned certain Chinese activities in the South China Sea and certain maritime features occupied by China, were properly characterized as claims not concerning sovereignty<sup>346</sup>. Since the tribunal considered it was able to determine the dispute without resolving questions of sovereignty, whether implicitly or explicitly, it considered that it had jurisdiction<sup>347</sup>. In this respect, the tribunal explained that the case was different from the *Chagos Islands* decision, where determination of certain of

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<sup>345</sup> **Vol. II, Annex 9**, United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982, 1833 UNTS 3, Art. 298(1)(a)(i).

<sup>346</sup> *In the matter of an arbitration before an Arbitral Tribunal constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea (Republic of the Philippines v. People’s Republic of China)*, PCA Case No. 2013-19, Award on Jurisdiction and Admissibility, 29 October 2015, p. 59, para. 152.

<sup>347</sup> *Ibid.*, pp. 59-60, para. 153.

Mauritius's claims would have required an implicit decision on sovereignty, which was, indeed, on analysis, the true object of Mauritius's claim<sup>348</sup>.

5.67 There will of course be cases in which the Court or a tribunal determines that the real issue in dispute continues to fall within its jurisdiction although it implicates other aspects in a peripheral or ancillary fashion<sup>349</sup>.

5.68 In other cases, it may be possible to interpret the compromissory clause providing the basis of the Court's jurisdiction under Article 36(1) of the Statute as extending to the whole dispute. This was the case in the *Oil Platforms* case, in which the Court held that its jurisdiction extended to the determination of whether the United States had carried out an unlawful use of force, since the language of "essential security interests" in Article XXI of the Treaty of Amity was sufficiently broad to capture what the United States claimed was an act of self-defence<sup>350</sup>. But the Court was careful not to determine matters falling outside the strict boundaries of its jurisdiction under the Treaty of Amity, which was confined to the interpretation and application of the Treaty<sup>351</sup>.

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<sup>348</sup> *Ibid.*

<sup>349</sup> See *Certain German Interests in Polish Upper Silesia (Germany v. Poland), Preliminary Objections, Judgment, 1925, P.C.I.J., Series A, No. 6*, p. 18.

<sup>350</sup> *Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, I.C.J. Reports 2003*, pp. 182-183, para. 42; see also *Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objections, I.C.J. Reports 1996 (II)*, p. 811, para. 20.

<sup>351</sup> *Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objections, I.C.J. Reports 1996 (II)*, p. 810, para. 16 ("[t]he Court . . . must ascertain whether the violations of the Treaty of 1955 pleaded by Iran do or do not fall within the provisions of the Treaty and whether, as a consequence, the dispute is one which the Court has jurisdiction *ratione materiae* to entertain.").

5.69 But those cases are to be distinguished from the claims that Qatar has sought to bring before the ICAO Council. The fact remains that an “incidental connection” with the claimed basis of jurisdiction is not sufficient to bring an entirely different dispute within the scope of a court or tribunal’s jurisdiction<sup>352</sup>. As Judge Koroma put it in his Separate Opinion in the *Georgia v. Russia* case:

“[a] link must exist between the substantive provisions of the treaty invoked and the dispute. This limitation is vital. Without it, States could use the compromissory clause as a vehicle for forcing an unrelated dispute with another State before the Court.”<sup>353</sup>

5.70 Such considerations are particularly important in the case of a specialized body, such as the ICAO Council, when faced with a dispute falling well outside its ordinary subject-matter jurisdiction.

#### D. APPLICATION OF THE “REAL ISSUE” TEST IN THE CIRCUMSTANCES OF THIS CASE

5.71 In the circumstances of the present case, the question before the Court is accordingly to determine on an objective basis the “real issue” in dispute between Qatar and the Appellants. No assistance is to be found in this regard in the Decision of the ICAO Council, since it did not seek to identify the subject-matter of the dispute in its Decision. Neither does the Decision disclose whether the ICAO Council accepted the Appellants’ characterization of the dispute (but considered it could nevertheless exercise jurisdiction), or indeed, whether it even determined the Preliminary Objections separately. This manifest lack of

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<sup>352</sup> *In the matter of the Chagos Marine Protected Area Arbitration (Republic of Mauritius v. United Kingdom of Great Britain and Northern Ireland)*, PCA Case No. 2011-03, Arbitral Award of 18 March 2015, p. 90, para. 220.

<sup>353</sup> Separate Opinion of Judge Koroma, *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*, p. 185, para. 7.

reasoning reinforces the conclusion that the Court must itself determine the subject-matter of Qatar’s claims *de novo*, on the basis of the pleadings and materials filed before the ICAO Council and before it in this proceeding, while giving particular attention to the formulation of the dispute as chosen by Qatar in filing its ICAO Application and accompanying Memorial<sup>354</sup>.

5.72 In its ICAO Application, Qatar stated that the dispute concerns the facts whereby:

“On 5 June 2017 the Governments of the Respondents announced, with immediate effect and without any previous negotiation or warning, that Qatar-registered aircraft are not permitted to fly to or from the airports within their territories and would be barred not only from their respective national air spaces, but also from their Flight Information Regions (FIRs) extending beyond their national airspace even over the high seas.”<sup>355</sup>

5.73 Qatar further made clear that it considers its claim to be broader than the question only of the interpretation and application of the Chicago Convention, both as a matter of fact and law. It called on the ICAO Council “[t]o determine that the Respondents violated by their actions against the State of Qatar their obligations under the Chicago Convention, its Annexes and other rules of international law.”<sup>356</sup> The accompanying Memorial went on to cite the

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<sup>354</sup> *Fisheries Jurisdiction (Spain v. Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, pp. 448-489, para. 30; see also *Territorial and Maritime Dispute (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 848, para. 38.

<sup>355</sup> **Vol. III, Annex 23**, ICAO Application, p. 1. The accuracy of this statement of facts is not a matter for the Court at this stage, and the Appellants reserve their rights in this regard.

<sup>356</sup> *Ibid.*, p. 2.

Charter of the United Nations, the UNCLOS, as well as a number of provisions of the Chicago Convention<sup>357</sup>.

5.74 Importantly, Qatar also recognized that the factual dispute arose following the Appellants' decision to impose countermeasures on it, noting that the Appellants "repeatedly gave an ultimatum to the State of Qatar on matters unrelated to air navigation and air transport" and that "the [Appellants] declared all Qatar's citizens and resident[s] 'undesirable' (*persona non grata*) in their territories and ordered them to leave the Respondents' territories within 14 days."<sup>358</sup>

5.75 Once Qatar received the ICAO Preliminary Objections, it sought to modify the way it had characterized the dispute, arguing that "[t]he 'real' issue before the Council is the breach by the Respondents of the Chicago Convention and its Annexes; this is what the Applicant has put before the Council in the Application and the Memorial and it is plain and clear what the State of Qatar is requesting from the Council."<sup>359</sup> Yet notwithstanding these attempts to modify and restrict the scope of its ICAO Application, Qatar continued to assert that the ICAO Council should consider matters that manifestly did not fall within the Chicago Convention.

5.76 Thus Qatar asserted that it "does not respond now to the allegations that is [sic] supports terrorism, or terrorism financing, etc. At the appropriate later stage of the proceedings (merits) the State of Qatar will provide a robust defence on the facts and in law to the claim of the [Appellants], which will

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<sup>357</sup> **Vol. III, Annex 23**, ICAO Memorial, Sec. (e).

<sup>358</sup> *Ibid.*, Sec. (g).

<sup>359</sup> **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, para. 44.

show that the actions taken by the [Appellants] are not lawful countermeasures, or otherwise lawful in international law.”<sup>360</sup>

5.77 Accordingly, even on a characterization based only on Qatar’s pleadings, it is clear that the dispute before the ICAO Council concerns matters falling beyond the scope of the Chicago Convention.

5.78 That this is the case is confirmed by the positions taken by the Appellants before the ICAO Council. In their Preliminary Objections, the Appellants in good faith invoked the doctrine of countermeasures to explain the measures they had imposed, confirming that:

“... insofar as they require any justification, the measures adopted by them, which form the subject of Qatar’s complaints in Application (A), are lawful countermeasures under customary international law, taken in response to Qatar’s failure to comply with its international obligations, unrelated to civil aviation, owed to the [Appellants]. The legality of the countermeasures cannot be adjudicated without ruling upon the legality of Qatar’s actions. The real issue in the present case lies outside of international civil aviation.”<sup>361</sup>

5.79 The Preliminary Objections explained that:

“The Council thus has no jurisdiction to adjudicate upon the wider dispute between the parties unrelated to international civil aviation, in particular, Qatar’s non-compliance with the Riyadh Agreements, other instruments relating to counter-terrorism and its obligations relating to non-interference in the internal affairs of other States . . . which constitute the centre

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<sup>360</sup> *Ibid.*, para. 77.

<sup>361</sup> **Vol. III, Annex 24**, ICAO Preliminary Objections, para. 6.

of gravity and the ‘real issue’ of the dispute. It also has no jurisdiction to adjudicate upon the legality of the actions taken by the Respondents as countermeasures in response to Qatar’s violation of its obligations.”<sup>362</sup>

5.80 Similarly, in the ICAO Rejoinder, the Appellants confirmed that:

“[T]he ‘real issue’ in dispute . . . concerns Qatar’s multiple, grave, and persistent breaches of international obligations essential to the security of the Respondents, which compelled the Respondents to enact a basket of lawful countermeasures, including the measures of which Qatar now complains. The ‘real issue’ in this case . . . concerns matters such as the principle of non-intervention, subversion and terrorism . . . [The ICAO Council’s determination of this issue] would, in turn, require the Council to conduct a detailed factual inquiry into Qatar’s activities in relation to certain terrorist organizations and interference in the domestic affairs of its neighbours and to assess the lawfulness of Qatar’s activities against its obligations under, among others, the Riyadh Agreements, the International Convention for the Suppression of the Financing of Terrorism, Security Council Resolution 1373(2001) and customary international law.”<sup>363</sup>

5.81 That the real issue in dispute between the Parties in fact concerns Qatar’s non-compliance with other obligations under international law is also manifest from other sources. For instance, the statements that Qatar asserts show that it satisfied the precondition of negotiation – which, as is explained below in Chapter VI, do not evidence that it made a genuine attempt to negotiate – evidence beyond doubt that the real matter in dispute concerns

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<sup>362</sup> *Ibid.*, para. 33.

<sup>363</sup> **Vol. IV, Annex 26**, ICAO Rejoinder, p. iii, Executive Summary, paras 2 and 3.

matters other than civil aviation. Not one of the many media articles and other public statements Qatar referred to concern the airspace restrictions, but all concern the wider dispute.

5.82 Instead, as the Appellants have consistently asserted, and have set out again in Chapter II of this Memorial, the real issue in dispute between the Parties concerns Qatar's long-standing violations of its obligations under international law other than under the Chicago Convention. The dispute concerns Qatar's ongoing support for and harbouring of terrorists and extremists, its interference in the internal affairs of other States and its propagation of hate speech through its State-owned and -controlled media. These actions constituted breaches of numerous international obligations, including the general international law principle of non-intervention in other States' domestic affairs, obligations arising under the Riyadh Agreements, the ICSFT, and Security Council Resolutions. In response to these violations, the Appellants took a set of measures, including the airspace restrictions that form the basis of Qatar's claim, which, even if they are inconsistent with the Appellants' obligations under the Chicago Convention (which is denied), would in any case be justified as lawful countermeasures.

5.83 None of these matters fall within the ICAO Council's jurisdiction *ratione materiae* for the purposes of Article 84 of the Chicago Convention, and thus the Court should find that the Council had no jurisdiction over Qatar's ICAO Application.

E. THE DECISION IN *APPEAL RELATING TO THE JURISDICTION OF THE ICAO COUNCIL (INDIA V. PAKISTAN)* IS INAPPOSITE

5.84 One of Qatar's principal arguments before ICAO was that the Applicant's First Preliminary Objection should be rejected on the basis of the

Court's decision in the *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)* case<sup>364</sup>. Qatar claimed that the decision stood for the proposition that invocation of a merits defence is irrelevant for the purposes of determining jurisdiction.

5.85 The Court in that case noted that the ICAO Council could not:

“be deprived of jurisdiction merely because considerations that are claimed to lie outside the [ICAO] Treaties may be involved if, irrespective of this, issues concerning the interpretation or application of these instruments are nevertheless in question. The fact that a defence on the merits is cast in a particular form, cannot affect the competence of the tribunal or other organ concerned, – otherwise parties would be in a position themselves to control that competence . . . [The ICAO Council's] competence must depend on the character of the dispute submitted to it and on the issues thus raised – not on those defences on the merits, or other considerations, which would become relevant only after the jurisdictional issues had been settled.”<sup>365</sup>

5.86 The situation at issue in *India v. Pakistan* is not analogous to that in the Appeals now before the Court. India's jurisdictional challenge focused on whether the treaty giving rise to the ICAO Council's jurisdiction was still in force. India objected to jurisdiction on the basis that the purported suspension or termination of the Chicago Convention and the IASTA meant that there was no applicable treaty for the ICAO Council to interpret or apply:

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<sup>364</sup> *Appeal Relating to the Jurisdiction of the ICAO Council, (India v. Pakistan), Judgment, I.C.J. Reports 1972*, p. 61, para. 27; cf. **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, paras 66-71.

<sup>365</sup> *Appeal Relating to the Jurisdiction of the ICAO Council, (India v. Pakistan), Judgment, I.C.J. Reports 1972*, p. 61, para. 27; cf. **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, para. 71.

“There is no disagreement between the Applicant and the Respondent relating to the interpretation or application of the Convention or the Transit Agreement. . . . When the treaty is terminated, or suspended in whole or in part, as between two States, any dispute relating to such termination or suspension cannot be referred to the Council, since in such a case no question of ‘interpretation’ or ‘application’ can possibly arise, there being no treaty in operation as between the two States.”<sup>366</sup>

5.87 India argued that the relevant ICAO Conventions had been replaced by a special régime with Pakistan<sup>367</sup>. It even sought to argue that the ICAO Council did not even have *compétence de la compétence*, a point clearly rejected by the Court<sup>368</sup>.

5.88 The Court rejected India’s argument on the basis that suspension or termination of the treaties giving rise to the ICAO Council’s jurisdiction could not itself act as a limitation on the ICAO Council’s jurisdiction<sup>369</sup>. It suffered from two problems. First, it suggested that the purported termination of a treaty that was of disputed validity was sufficient to remove the dispute (including as to the validity of its termination) from the scope of the jurisdictional clause in that treaty. And second, the argument failed to account for the principle of *compétence de la compétence*. Neither issue arises in respect of the Appellants’ objection in this case.

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<sup>366</sup> *Appeal Relating to the Jurisdiction of the ICAO Council, (India v. Pakistan), Application of India, I.C.J. Reports 1972, p. 11, para. 27(a).*

<sup>367</sup> *Ibid.*, pp. 51 and 62, paras 10 and 29.

<sup>368</sup> *Ibid.*, p. 61, para. 27.

<sup>369</sup> *Ibid.*, pp. 62-64, para. 30.

5.89 By comparison, India did not contest that the “real issue” in dispute was one that fell within the ICAO Council’s jurisdiction. Nevertheless, the Court recognized that the ICAO Council must first construe the “character of the dispute submitted to it and the issues thus raised”, as a preliminary matter before it could determine whether the dispute was one relating to the interpretation or application of the Chicago Convention<sup>370</sup>. Thus it foreshadowed the application of the real issue test as it has been developed in subsequent cases, but did not need to apply it in that case.

5.90 The Court’s statement that the ICAO Council’s “competence must depend on the character of the dispute submitted to it and . . . not on [the] defences on the merits” must be read in this context<sup>371</sup>. In that case, the defence invoked by India still arose within the bounds of the Chicago Convention, and was thus for the ICAO Council to determine. Clearly, the Court did not have in mind a case such as this, in which the real issue in dispute encompasses a customary international law defence arising outside of the Chicago Convention.

5.91 The Appellants’ objection is thus to be distinguished from *India v. Pakistan*, in that their good faith invocation of countermeasures took the dispute outside the scope of the Convention. The Appellants’ objection accordingly asks the Court to recognize that the “real” dispute before the ICAO Council is one that concerns the compliance by Qatar with international law obligations that are completely outside of and separate from the Chicago Convention. Such an objection was not determined by the Court in *India v. Pakistan*.

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<sup>370</sup> *Ibid.*, p. 61, para. 27.

<sup>371</sup> *Ibid.*

## F. CONCLUSION ON THE “REAL ISSUE” TEST

5.92 In conclusion, the Court must apply the “real issue” test in determining the Appeal against the Decision of the ICAO Council in respect of the Appellants’ First Preliminary Objection. This entails an objective characterization of the subject-matter of the dispute, by reference not only to Qatar’s framing of the dispute but also taking into account the Four States’ positions on the factual predicate of the dispute and the legal rights and duties involved.

5.93 As is explained above, the ICAO Council had a positive duty to undertake its own analysis to determine the real subject-matter of the claim before it<sup>372</sup>; as the Court has recently emphasized, “[t]he matter is one of substance, not of form”<sup>373</sup>. It manifestly failed to do so, instead rejecting the Appellants’ objection without providing any reasons.

5.94 Since the scope of the dispute that the ICAO Council would have to decide goes beyond its jurisdiction under Article 84 of the Chicago Convention; it should have upheld the Appellants’ First Preliminary Objection and declined to exercise jurisdiction<sup>374</sup>.

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<sup>372</sup> See *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile), Preliminary Objection, Judgment, I.C.J. Reports 2015*, p. 602, para. 26. See also *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016*, pp. 26-27, para. 50; and *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment of 6 June 2018*, p. 17, para. 48.

<sup>373</sup> *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment of 6 June 2018*, p. 17, para. 48.

<sup>374</sup> *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile), Preliminary Objection, Judgment, I.C.J. Reports 2015*, p. 610, para. 53.

5.95 Accordingly, the Court should characterize the “real issue” in dispute as one not concerning the interpretation or application of the Chicago Convention, but instead the quite separate issue of Qatar’s internationally wrongful acts, in response to which the Appellants imposed lawful countermeasures. That dispute is manifestly outside of the ICAO Council’s jurisdiction *ratione materiae* under Article 84 of the Chicago Convention.

**Section 5. In the alternative, Qatar’s claims are inadmissible as adjudication on the merits would be incompatible with judicial propriety**

5.96 Even if the Court were to reject the Appellants’ First Preliminary Objection in respect of the ICAO Council’s jurisdiction, and conclude that the ICAO Council in principle has jurisdiction over Qatar’s claims of breach of the Chicago Convention in the ICAO Application, that is not the end of the analysis of the ICAO Council’s competence to hear the dispute.

5.97 The Appellants’ alternative position is that the circumstances of the present case are such that the ICAO Council should nevertheless, and in any case, have declared Qatar’s claims inadmissible. This is on the basis that it was required for reasons of judicial propriety to decline to exercise such jurisdiction as it possesses and in particular in order to safeguard the ICAO Council’s judicial function and its judicial integrity when acting under Article 84 of the Chicago Convention<sup>375</sup>.

A. JUDICIAL PROPRIETY AND THE NEED TO PROTECT THE JUDICIAL FUNCTION AND JUDICIAL INTEGRITY

5.98 The Court has recognized on a number of occasions that, notwithstanding the fact that in principle it may have jurisdiction over a dispute,

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<sup>375</sup> See above, paras 3.4-3.12.

factors may exist which mean that it would be inconsistent with its judicial function and with judicial propriety for it to exercise that jurisdiction to decide a particular issue or even to proceed to render any decision on the merits of an application. That may be the case even where both parties desire the Court to give a ruling. As the Court observed in *Northern Cameroons*:

“[E]ven if the Court, when seised, finds that it has jurisdiction, the Court is not compelled in every case to exercise that jurisdiction. There are inherent limitations on the exercise of the judicial function which the Court, as a court of justice, can never ignore. There may thus be an incompatibility between the desires of an applicant, or, indeed, of both parties to a case, on the one hand, and on the other hand the duty of the Court to maintain its judicial character. The Court itself, and not the parties, must be the guardian of the Court’s judicial integrity.”<sup>376</sup>

5.99 There exists a variety of factors which may result in the conclusion that preservation of the judicial function and/or judicial propriety precludes the exercise of jurisdiction. For example, in the *Free Zones* case, the Permanent Court identified a number of such factors which might prevent it from rendering a decision on the particular questions submitted to it by the parties. The Permanent Court held:

(a) first, that it could not be constrained to choose between competing constructions of a treaty advanced by the parties, “none of which may correspond to the opinion at which it may arrive”<sup>377</sup>;

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<sup>376</sup> *Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963, p. 29.*

<sup>377</sup> *Free Zones of Upper Savoy and the District of Gex, Order of 19 August 1929, P.C.I.J., 1929, Series A, No. 22, p. 15.*

(b) second, that “it would be incompatible with the Statute, and with its position as a Court of Justice, to give a judgment which would be dependent for its validity on the subsequent approval of the Parties”<sup>378</sup>; and

(c) third, that it was unable to comply with the request of the parties that it give guidance as to the applicable regime for tariff exemptions, which the Permanent Court regarded as an essentially non-legal question. As the Permanent Court explained:

“the settlement of such matters is not a question of law, but is a matter depending on the interplay of economic interests on which no Government can afford to be controlled by an outside organ. Such questions are outside the sphere in which a Court of Justice, concerned with the application of rules of law, can help in the solution of disputes between two States.”<sup>379</sup>

5.100 Similarly, in *Haya de la Torre*, the present Court declined to provide any indication as to the manner in which the provision of asylum should be terminated, despite the fact that both parties had requested that the Court give a ruling in this regard. Again, the basis for the Court declining to rule on the question put before it was that the issue was a non-legal one. The Court observed that the various available alternatives:

“are conditioned by facts and by possibilities which, to a very large extent, the Parties are alone in a position to appreciate. A choice amongst them could not be based on legal considerations, but only on

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<sup>378</sup> *Free Zones of Upper Savoy and the District of Gex, Judgment of 7 June 1932, P.C.I.J., 1932, Series A/B, No. 46, p. 161.*

<sup>379</sup> *Ibid.*, p. 162.

considerations of practicability or of political expediency; it is not part of the Court's judicial function to make such a choice.”<sup>380</sup>

5.101 Considerations of a different nature implicating the judicial propriety of ruling upon the applicant's claims arose in *Northern Cameroons*. There, having concluded that the questions relating to the United Kingdom's compliance with its obligations under the Trusteeship Agreement as to which Cameroon had sought a declaration had been rendered without object as a consequence of the termination of the Trusteeship Agreement, the Court reiterated that:

“even if, when seised of an Application, the Court finds that it has jurisdiction, it is not obliged to exercise it in all cases. If the Court is satisfied, whatever the nature of the relief claimed, that to adjudicate on the merits of an Application would be inconsistent with its judicial function, it should refuse to do so.”<sup>381</sup>

5.102 As a consequence, the Court concluded that independently of whether or not it had jurisdiction over Cameroon's claims (a question it did not decide), the proper discharge of its duty to safeguard its judicial function required it not to adjudicate upon those claims, which it found in the circumstances had been rendered “devoid of purpose”:

“The Court must discharge the duty to which it has already called attention--the duty to safeguard the judicial function. Whether or not at the moment the Application was filed there was jurisdiction in the Court to adjudicate upon the dispute submitted to it,

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<sup>380</sup> *Haya de la Torre (Colombia v. Peru), Judgment, I.C.J. Reports 1951, p. 79.*

<sup>381</sup> *Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963, p. 37.*

circumstances that have since arisen render any adjudication devoid of purpose. Under these conditions, for the Court to proceed further in the case would not, in its opinion, be a proper discharge of its duties.”<sup>382</sup>

5.103 In a similar fashion, in the *Nuclear Tests* cases, the Court made clear that it could not “fail to take cognizance of a situation in which the dispute has disappeared because the object of the claim has been achieved by other means”<sup>383</sup>, with the result that the claims of the Appellants “no longer ha[ve] any object”<sup>384</sup>.

5.104 In doing so, the Court, whilst again not finally resolving the question of whether it had jurisdiction over the disputes, held that it in any case possessed an inherent jurisdiction:

“to provide for the orderly settlement of all matters in dispute, to ensure the observance of the ‘inherent limitations on the exercise of the judicial function’ of the Court, and to ‘maintain its judicial character’ (*Northern Cameroons, Judgment, I.C.J. Reports 1963*, at p. 29).”<sup>385</sup>

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<sup>382</sup> *Ibid.*, p. 38

<sup>383</sup> *Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974*, p. 271, para. 55; *Nuclear Tests (New Zealand v. France), Judgment, I.C.J. Reports 1974*, p. 476, para. 58.

<sup>384</sup> *Ibid.*, *Nuclear Tests (Australia v. France)*, p. 271, para. 56, *Nuclear Tests (New Zealand v. France)*, p. 476, para. 59.

<sup>385</sup> *Ibid.*, *Nuclear Tests (Australia v. France)*, p. 259, para. 23; *Nuclear Tests (New Zealand v. France)*, p. 463, para. 23.

5.105 The Court expressly linked the existence of that inherent jurisdiction to the consensual basis for and origin of its contentious jurisdiction:

“Such inherent jurisdiction . . . *derives from the mere existence of the Court as a judicial organ established by the consent of States*, and is conferred upon it in order that its basic judicial functions may be safeguarded.”<sup>386</sup>

5.106 As noted at paragraph 4.26 above, in light of the recent clarification by the Court of the distinction between objections to jurisdiction and admissibility in *Croatian Genocide*, and given that they presuppose the existence of jurisdiction, considerations of the type at issue in *Northern Cameroons* and the *Nuclear Tests* cases are properly to be regarded as matters going to the admissibility of a claim<sup>387</sup>.

5.107 Likewise, the fundamental principle of the consensual basis of jurisdiction may entail that it is inconsistent with judicial propriety and the proper exercise by an adjudicative body of its judicial function for it to rule upon an issue, notwithstanding that, in principle, it may possess jurisdiction to do so.

5.108 An analogous situation, which likewise implicates considerations of judicial propriety and illustrates the link between such considerations and the fundamental principle of consent as the basis for the jurisdiction of the Court, is presented in the different context of the exercise by the Court of its advisory function under Article 65 of its Statute.

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<sup>386</sup> *Ibid.* (emphasis added).

<sup>387</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, p. 456, para. 120. See above, para. 4.26.

5.109 In that context, the Court when called upon to exercise its advisory jurisdiction has consistently recognized that the principle that it is only able to exercise jurisdiction over a dispute where the States involved have consented thereto does not as such affect its jurisdiction to render an Advisory Opinion<sup>388</sup>. At the same time, however, it has also recognized that the consensual nature of its jurisdiction plays a fundamental role in the separate and distinct question of whether it should, pursuant to the discretion it possesses under Article 65(1) of the Statute, in fact proceed to render an opinion requested of it and whether such a course of action would be consistent with judicial propriety and the Court's judicial character.

5.110 For instance, in *Western Sahara*, the Court observed that:

“lack of consent might constitute a ground for declining to give the opinion requested if, in the circumstances of a given case, considerations of judicial propriety should oblige the Court to refuse an opinion. In short, the consent of an interested State continues to be relevant, not for the Court's competence, but for the appreciation of the propriety of giving an opinion.

In certain circumstances, therefore, the lack of consent of an interested State may render the giving of an advisory opinion incompatible with the Court's judicial character. An instance of this would be when the circumstances disclose that to give a reply would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be

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<sup>388</sup> *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71; *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 24, para. 31; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 157-158, para. 47.

submitted to judicial settlement without its consent.”<sup>389</sup>

5.111 Similarly, consider the question of the Court’s ability to rule upon a dispute implicating the rights of a third State not party to the proceedings, which has not consented to the adjudication of its dispute. This question likewise implicates the consensual basis for the Court’s jurisdiction, and raises analogous concerns as to the proper exercise of the judicial function and judicial propriety.

5.112 The decision of the Court in *Monetary Gold* is illuminating in this regard. Notably, the Court, whilst recognising that the parties to the proceedings had conferred jurisdiction upon it to decide the questions contained in Italy’s application relating to entitlement to the monetary gold as between Italy and the United Kingdom, emphasized that it was nevertheless required to “examine whether this jurisdiction is co-extensive with the task entrusted to it”<sup>390</sup>.

5.113 The basis for the Court’s eventual decision that it was unable to exercise the jurisdiction conferred upon it by the parties was that in order to do so, it would have to “decide a dispute between Italy and Albania”<sup>391</sup>. In that regard, the Court held that in light of the consensual basis for its jurisdiction, it could not “decide such a dispute without the consent of Albania”; as the Court explained:

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<sup>389</sup> *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 25, paras 32-33; see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 157, para. 47.

<sup>390</sup> *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and United States of America), Preliminary Question, Judgment, I.C.J. Reports 1954*, p. 31.

<sup>391</sup> *Ibid.*, p. 32.

“To adjudicate upon the international responsibility of Albania without her consent would run counter to a well-established principle of international law embodied in the Court’s Statute, namely, that the Court can only exercise jurisdiction over a State with its consent . . . .”<sup>392</sup>

5.114 On that basis, the Court concluded that “although Italy and the three respondent States have conferred jurisdiction upon the Court, it cannot exercise this jurisdiction”<sup>393</sup>. Similarly, in the *dispositif*, the Court held that:

“the jurisdiction conferred upon it by the common agreement of France, the United Kingdom, the United States of America and Italy does not, in the absence of the consent of Albania, authorize it to adjudicate upon the first Submission in the Application of the Italian Government.”<sup>394</sup>

5.115 Notwithstanding the jurisdiction that had been conferred on it by the parties to resolve issues as between the United Kingdom and Italy, the Court concluded that it was unable to exercise that jurisdiction due to a conflict with the fundamental principle of the consensual basis for its jurisdiction.

5.116 That holding can equally be framed as one which implicates the proper exercise of the Court’s judicial function, and therefore the propriety of the Court’s exercising jurisdiction over a dispute in respect of which the relevant States have not consented.

5.117 As such, it is submitted that considerations relating to the need to safeguard the fundamental principle of consent to jurisdiction may give rise to

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<sup>392</sup> *Ibid.*

<sup>393</sup> *Ibid.*, p. 33.

<sup>394</sup> *Ibid.*, p. 34

reasons why a court or tribunal may conclude that it would be inconsistent with judicial propriety and the judicial function for the court or tribunal to exercise a jurisdiction which has been conferred upon it, and on that basis declare an application or claim inadmissible.

B. JUDICIAL PROPRIETY AND THE PROPER EXERCISE OF THE JUDICIAL FUNCTION IN THE CIRCUMSTANCES OF THE PRESENT CASE

5.118 Turning to the situation in the present case, the starting point is necessarily Article 84 of the Chicago Convention. Since the jurisdiction of the ICAO Council extends only to disagreements concerning the “interpretation or application” of the Chicago Convention and its Annexes, it would be improper for the ICAO Council to extend its jurisdiction beyond these bounds and exercise jurisdiction over matters falling outside the terms of Article 84.

5.119 If the case were to proceed to the merits in its current form, the ICAO Council would have two options. First, it might adjudicate the issues relating to whether the airspace restrictions constitute legitimate countermeasures, including, in particular, issues relating to whether Qatar has breached its international obligations in matters outside civil aviation. But this would mean that the Appellants will be required to plead their countermeasures defence, and the allegations of Qatar’s wrongfulness, in a forum that is not properly equipped to hear such matters, and in respect of which they have not consented to its exercising jurisdiction.

5.120 Here, it is worth recalling the decision of the Court in *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, that it is an “essential point of legal principle” that “a party should not have to give an

account of itself on issues of merits before a tribunal which lacks jurisdiction in the matter.”<sup>395</sup>

5.121 The alternative would be for the ICAO Council to *decline* to hear the countermeasures defence – and Qatar’s internationally wrongful actions justifying the imposition of countermeasures. But this would mean that it could not adjudicate the matter before it, since it could not determine the circumstances precluding the wrongfulness of the acts alleged. Accordingly, it would be wrong for the ICAO Council to adjudicate the dispute in part only, ignoring that part which contains a vital defence of the Appellants.

5.122 As set out above, any exercise of jurisdiction by the ICAO Council over the merits of the narrow disagreement in fact submitted by Qatar, would necessarily require the ICAO Council to take a view on whether the airspace restrictions can properly be justified as lawful countermeasures, which in turn would involve the ICAO Council adjudicating on the wider dispute between the Parties as to whether Qatar has breached its international obligations in relation to matters outside the scope of the Chicago Convention.

5.123 The dispute between the Parties in this regard is one relating precisely to matters which cannot be characterized as concerning the “interpretation or application” of the Chicago Convention, and thus falls outside the ICAO Council’s jurisdiction.

5.124 For the ICAO Council to exercise jurisdiction over a dispute clearly falling outside its limited competence and in respect of which the Appellants have not consented to it exercising jurisdiction, is inconsistent with the

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<sup>395</sup> *Appeal Relating to the Jurisdiction of the ICAO Council, (India v. Pakistan), Judgment, I.C.J. Reports 1972, p. 56, para. 18(b).*

consensual basis of the ICAO Council's jurisdiction. As a result, it would be inconsistent with judicial propriety and the judicial character of the functions accorded to the ICAO Council under Article 84 of the Chicago Convention.

5.125 Such a situation is analogous to the situation at issue in *Monetary Gold*, in which the Court held that it was unable to exercise a jurisdiction conferred upon it and which it undoubtedly possessed, where to do so would effectively require it to adjudicate upon the rights and obligations of a third State which had not consented to the exercise of its jurisdiction, and as a result, over which it did not have jurisdiction<sup>396</sup>. The issue in *Monetary Gold* was one as to lack of jurisdiction over a dispute involving a particular State (i.e., a lack of jurisdiction *ratione personae*). In the present case, although the Parties involved are the same, the relevant lack of jurisdiction is one *ratione materiae*, insofar as the ICAO Council does not have jurisdiction over issues falling outside the narrow scope of Article 84 of the Chicago Convention, which only grants the ICAO Council jurisdiction in respect of disputes relating to the "interpretation or application" of the Chicago Convention.

5.126 In such circumstances, if the ICAO Council were to exercise jurisdiction over Qatar's claims, which would necessarily require it to rule upon the Appellants' defence that the airspace restrictions may be justified as lawful countermeasures, this "would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent"<sup>397</sup>.

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<sup>396</sup> *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and United States of America), Preliminary Question, Judgment, I.C.J. Reports 1954*, pp. 31-33.

<sup>397</sup> *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 25, para. 33.

5.127 As a consequence, even if the ICAO Council were to be held to have jurisdiction over the narrow disagreement submitted to it by Qatar in the ICAO Application, in the circumstances of the present case it should have declared Qatar's Application inadmissible insofar as any resolution of Qatar's claims will necessarily require it to adjudicate upon matters over which it does not possess jurisdiction. Any such exercise of jurisdiction by the ICAO Council would be incompatible with the consensual basis for jurisdiction, and as a result, incompatible with judicial propriety and the ICAO Council's judicial function under Article 84 of the Chicago Convention.

### **Section 6. Conclusion**

5.128 In light of:

- (a) the fact that the jurisdiction of the ICAO Council is limited to disputes relating to the interpretation and application of the Chicago Convention, and
- (b) the Appellants' position that the breaches of the Chicago Convention alleged by Qatar may be justified as lawful countermeasures,

the Appellants submit that the ICAO Council is not competent to hear the disagreement submitted to it by Qatar in the ICAO Application.

5.129 That conclusion is justified on two alternative bases, both as an objection to jurisdiction and, in the alternative, as an objection to admissibility.

5.130 First, as an objection to the jurisdiction of the ICAO Council, the Appellants' position is that had the ICAO Council complied with its duty to characterize the "real issue" in dispute between the Parties, it would have held that the dispute is not confined to the narrow allegations of breach of the Chicago Convention made by Qatar, but instead encompasses the wider dispute

between the Parties. This wider dispute implicates Qatar's breaches of other international obligations, which are relied upon by the Appellants as the basis for their adoption of countermeasures. That wider dispute is not one relating to the "interpretation or application" of the Chicago Convention, and therefore falls outside the jurisdiction of the ICAO Council under Article 84 of the Chicago Convention.

5.131 Second, in the alternative, as an objection to the admissibility of Qatar's claims before the ICAO Council, even if it were to be held that the ICAO Council has jurisdiction over Qatar's narrow claims as raised in its ICAO Application, any exercise of jurisdiction by the ICAO Council over those claims would necessarily require it to adjudicate upon the wider dispute between the Parties. The Appellants (and Qatar) have not, however, consented to the ICAO Council adjudicating upon that dispute. In light of the fundamental principle that a State cannot be required to submit its dispute for adjudication except insofar as it has consented thereto, it would thus be inconsistent with judicial propriety and/or the ICAO Council's judicial function when acting under Article 84 of the Chicago Convention for the ICAO Council to adjudicate thereupon. The ICAO Council should therefore have ruled that Qatar's claims are inadmissible.

5.132 Even if that alternative submission were also not upheld, in the light of the strict subject-matter limitation upon the ICAO Council's *jurisdiction ratione materiae* resulting from the formulation of Article 84 of the Chicago Convention, the ICAO Council does not have jurisdiction to rule upon disputes which do not relate to the interpretation or application of the Chicago Convention.

5.133 As a consequence, the ICAO Council would be unable to render a final decision on the Appellants' substantive – indeed dispositive – defence on the merits that the airspace restrictions constitute lawful countermeasures under international law. In order not to compromise the Appellants' position, the only possible solution would be for the ICAO Council expressly to leave undecided the Appellants' invocation of countermeasures, merely recognizing it as a defence available under general international law that would dispose entirely of the alleged unlawfulness of the Appellants' measures. That, however, is entirely inconsistent with Qatar's stated position before the ICAO Council, and would in effect amount to a *non liquet*.

**CHAPTER VI**  
**THIRD GROUND OF APPEAL: THE ICAO COUNCIL ERRED IN**  
**REJECTING THE SECOND PRELIMINARY OBJECTION**

6.1 The Appellants' third ground of appeal against the Decision of the ICAO Council of 29 June 2018 is on the basis that, in the circumstances of the present case, the ICAO Council is not competent to rule upon the disagreement submitted to it by Qatar in the ICAO Application relating to the Chicago Convention insofar as Qatar failed to demonstrate that it had complied with the precondition of negotiation contained in Article 84 of the Chicago Convention, and the ICAO Application failed to comply with the requirements of Article 2(g) of the Rules. As a consequence, the ICAO Council erred in not accepting the Appellants' Second Preliminary Objection and in affirming its jurisdiction to proceed to hear the merits of the dispute. This ground of appeal constitutes a further and separate ground as to why the ICAO Council does not have jurisdiction in this case.

6.2 Under Article 84 of the Chicago Convention, jurisdiction is conferred on the ICAO Council to adjudicate only disagreements which "cannot be settled by negotiation" before their submission to the ICAO Council. Consistent with the Court's constant jurisprudence in respect of similarly worded jurisdictional clauses, it is a precondition to the existence of jurisdiction of the ICAO Council that an Applicant has in fact attempted negotiations with a view to settling the dispute before submitting an Application in that regard to the ICAO Council.

6.3 The requirement in Article 84 of the Chicago Convention that there should have been a prior attempt at negotiations is also reflected in Article 2(g) of the ICAO Rules, which provides that an Application and Memorial must

include “[a] statement that negotiations to settle the disagreement had taken place between the parties but were not successful.”<sup>398</sup>

6.4 In light of the express terms of Article 84 and the Court’s prior jurisprudence, the making of a genuine attempt to initiate negotiations in relation to the subject-matter of the disagreement prior to filing an Application is a precondition for the ICAO Council’s jurisdiction to adjudicate upon the merits of the disagreement (Section 1). In the present case, however, Qatar has failed to show that it in fact made a genuine attempt, or indeed any attempt at all, to initiate negotiations about the airspace restrictions it claims to constitute the subject of its Application prior to submitting it to the ICAO Council, with the result that the ICAO Council should have found that it is without jurisdiction to adjudicate upon the merits of the dispute (Section 2). In the alternative, Qatar’s ICAO Application failed to comply with the procedural requirements of Article 2(g) of the Rules, and as a consequence the ICAO Council should have held that Qatar’s ICAO Application was inadmissible (Section 3).

**Section 1. Prior negotiations constitute a precondition to the ICAO Council’s jurisdiction under Article 84 of the Chicago Convention**

6.5 As already noted, Article 84 states, in relevant part:

“If any disagreement between two or more contracting States relating to the interpretation or application of this Convention and its Annexes *cannot be settled by negotiation*, it shall, on the application of any State concerned in the disagreement, be decided by the Council.”<sup>399</sup>

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<sup>398</sup> Vol. II, Annex 6, ICAO Rules, Art. 2(g).

<sup>399</sup> Vol. II, Annex 1, Chicago Convention, Art. 84 (emphasis added).

6.6 On its true interpretation, and in light of the Court’s relevant precedents in relation to jurisdictional provisions containing a similar formulation, Article 84 contains a “precondition of negotiations”<sup>400</sup> such that, in order for the ICAO Council to have jurisdiction in relation to a disagreement, a party must at the least have made a genuine attempt to initiate negotiations prior to submitting the disagreement to the ICAO Council (Subsection A). In order to comply with the precondition of negotiations, the attempt to initiate negotiations must relate to the subject-matter of the disagreement submitted to the ICAO Council (Subsection B). Finally, both on the express terms of Article 84 and as a matter of principle, the precondition of negotiations must have been fulfilled prior to the date of *seisin* of the ICAO Council through the filing of the instrument commencing proceedings (Subsection C).

A. ARTICLE 84 OF THE CHICAGO CONVENTION CONTAINS A PRECONDITION OF NEGOTIATION

6.7 On its express terms, Article 84 stipulates that a disagreement between two or more contracting States as to the interpretation or application of the Chicago Convention may only be submitted to the ICAO Council if the disagreement “cannot be settled by negotiations”. As a consequence, the occurrence of prior negotiations between the parties (or at least a genuine attempt) in relation to the subject-matter of the disagreement to be submitted to the Council is an essential precondition to the jurisdiction of the Council to adjudicate upon the matter.

6.8 Similar requirements in jurisdictional or compromissory clauses contained in treaties are widespread in international practice. As the Court has

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<sup>400</sup> *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*, p. 130, para. 149.

previously emphasized in a case concerning a clause which likewise contained a precondition of negotiations:

“[I]t is not unusual in compromissory clauses conferring jurisdiction on the Court and other international jurisdictions to refer to resort to negotiations. Such resort fulfils three distinct functions.

In the first place, it gives notice to the respondent State that a dispute exists and delimits the scope of the dispute and its subject-matter.

...

In the second place, it encourages the parties to attempt to settle their dispute by mutual agreement, thus avoiding recourse to binding third-party adjudication.

In the third place, prior resort to negotiations or other methods of peaceful dispute settlement performs an important function in indicating the limit of consent given by States.”<sup>401</sup>

6.9 As is evident from the third consideration highlighted by the Court, a requirement in a dispute resolution clause in a treaty that a dispute must be one which “cannot be settled by negotiation” or other similar formulation constitutes a limitation upon the consent of the States parties. As such, as follows from the discussion in Chapter IV, fulfilment of the precondition of

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<sup>401</sup> *Ibid.*, pp. 124-125, para. 131.

negotiations is a matter going primarily to jurisdiction, rather than merely affecting the admissibility of a claim<sup>402</sup>.

6.10 This Court has had occasion to consider jurisdictional provisions containing a requirement of prior attempted negotiations formulated in a manner similar or identical to that contained in Article 84 of the Chicago Convention in a number of prior cases. It has consistently come to the conclusion that a provision containing such a “precondition of negotiations” (whether phrased in terms that the dispute “cannot be settled by negotiation” or “is not settled by negotiation”) imposes a precondition to the existence of the jurisdiction of the Court and that the precondition must be fulfilled prior to the filing of an Application and the *seisin* of the Court.

6.11 In its Advisory Opinion on the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, the issue before the Court was whether the United States was obliged to enter into an arbitration procedure in respect of a dispute with the United Nations relating to the United Nations Headquarters Agreement. The relevant jurisdictional provision, Article 21, paragraph (a) of the United Nations Headquarters Agreement provides:

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<sup>402</sup> *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 32, para. 65; see also *ibid.*, p. 39, para. 88 when consent to jurisdiction “is expressed in a compromissory clause in an international agreement, any conditions to which such consent is subject must be regarded as constituting the limits thereon. The Court accordingly considers that the examination of such conditions relates to its jurisdiction and not to the admissibility of the application”; *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*, p. 124, para. 131; *ibid.*, p. 130, para. 148. See above, Chapter IV, Section 1.

“[a]ny dispute between the United Nations and the United States concerning the interpretation or application of this agreement . . . which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators . . . .”<sup>403</sup>

The Court observed that, in addition to being required to satisfy itself that there was a dispute between the United States and the United Nations and that that dispute was one regarding the “interpretation or application” of the United Nations Headquarters Agreement, it was also required to “satisfy itself that [that dispute] is one ‘not settled by negotiation or other agreed mode of settlement’”<sup>404</sup>.

6.12 Similarly, in *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, the Court was faced with reliance by the applicant on a number of jurisdictional clauses contained in multilateral treaties, some of which required that, in order for the Court to have jurisdiction, a dispute relating to the interpretation or application of the relevant treaty had to be one which “is not settled by negotiation”.

6.13 In particular, the applicant sought to rely upon Article 29 of the Convention on the Elimination of All Forms of Discrimination against Women (*CEDAW*), which provides that:

“[a]ny dispute between two or more States Parties concerning the interpretation or application of the present Convention *which is not settled by negotiation* shall, at the request of one of them, be

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<sup>403</sup> Text quoted in *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, Advisory Opinion, I.C.J. Reports 1988*, p. 14, para. 7.

<sup>404</sup> *Ibid.*, p. 27, para. 34.

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 by request in conformity with the Statute of the Court.”<sup>405</sup>

6.14 In interpreting that provision, the Court observed that it “gives the Court jurisdiction in respect of any dispute between States parties concerning its interpretation or application, on condition that: it has not been possible to settle the dispute by negotiation”<sup>406</sup>. Having concluded that the requirement of negotiation was cumulative with the other conditions contained in Article 29 of the CEDAW<sup>407</sup>, the Court held that, it “must therefore consider whether the preconditions on its seisin set out in the said Article 29 have been satisfied in this case”<sup>408</sup>.

6.15 The Court went on to find that, although the applicant had issued various protests to the respondent in respect of the alleged conduct in issue which might be held to evidence the existence of a dispute for the purposes of Article 29, that provision “requires also that any such dispute be the subject of negotiations.”<sup>409</sup> On the evidence before it, the Court was not satisfied that the Democratic Republic of the Congo had in fact sought to commence negotiations in respect of the interpretation or application of the CEDAW, and

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<sup>405</sup> Convention on the Elimination of All Forms of Discrimination against Women, signed at New York on 18 December 1979, entered into force on 3 September 1981, 1249 UNTS 13 (*CEDAW*), Art. 29 (emphasis added).

<sup>406</sup> *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, *Jurisdiction and Admissibility, Judgment*, I.C.J. Reports 2006, p. 39, para. 87.

<sup>407</sup> *Ibid.*

<sup>408</sup> *Ibid.*; see also *ibid.*, p. 39, para. 88.

<sup>409</sup> *Ibid.*, pp. 40-41, para. 91

on that basis (as well as in light of its conclusion that the applicant had not complied with the additional cumulative requirements, in particular insofar as it also had not shown that it had sought to initiate the arbitration procedure foreseen by Article 29)<sup>410</sup>, the Court held that it was without jurisdiction under the CEDAW<sup>411</sup>.

6.16 A similar conclusion was reached in *Armed Activities* insofar as the applicant sought to found the Court's jurisdiction over its claims on Article 75 of the WHO Constitution, which confers jurisdiction on the Court in respect of:

“[a]ny question or dispute concerning the interpretation or application of this Constitution which is not settled by negotiation or by the Health Assembly. . . .”<sup>412</sup>

6.17 In addition to finding that there was no question or dispute between the parties falling within the scope of that provision<sup>413</sup>, the Court held that the applicant had:

“in any event not proved that the other *preconditions for seisin of the Court* established by that provision have been satisfied, namely that it attempted to settle the question or dispute by negotiation with Rwanda or that the World Health Assembly had been unable to settle it.”<sup>414</sup>

6.18 A similar approach was taken in Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia

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<sup>410</sup> *Ibid.*, pp. 40-41, paras 91-92.

<sup>411</sup> *Ibid.*, p. 41, para. 93.

<sup>412</sup> Quoted at *ibid.*, p. 41, para. 94.

<sup>413</sup> *Ibid.*, p. 43, para. 99.

<sup>414</sup> *Ibid.*, p. 43, para. 100 (emphasis added).

v. Russian Federation), in which the jurisdictional clause at issue was Article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination (**CERD**), which provides that:

“[a]ny dispute between two or more States Parties with respect to the interpretation or application of this Convention, *which is not settled by negotiation* or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.”<sup>415</sup>

6.19 The Court concluded that the requirements that a dispute must be one “which is not settled by negotiation or by the procedures expressly provided for in this Convention” contained in Article 22 of the CERD “establish preconditions to be fulfilled before the seisin of the Court.”<sup>416</sup> In reaching that conclusion, the Court considered its previous decisions in relation to comparably worded clauses, in particular the decisions in *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement 26 June 1947* and *Armed Activities on the Territory of the Congo*, discussed at paragraphs 6.11-6.17 above<sup>417</sup>, and the fact that in those prior

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<sup>415</sup> International Convention on the Elimination of All Forms of Racial Discrimination, signed at New York on 7 March 1966 entered into force on 4 January 1969, 660 UNTS 195 (**CERD**), Art. 22 (emphasis added).

<sup>416</sup> *Ibid.*, p. 128, para. 141; see also *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. 120, para. 40 and p. 125, para. 59; and *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, p. 11, para. 29.

<sup>417</sup> *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, pp. 126-128, paras 136-139.

decisions, the Court has “interpreted the reference to negotiations as constituting a precondition to seisin”<sup>418</sup>.

6.20 Subsequently, the Court has expanded the approach adopted in relation to provisions requiring that a dispute must be one which “is not settled by negotiation” in clauses such as Article 29 of the CEDAW and Article 22 of the CERD to provisions which stipulate that the dispute must be one which “cannot be settled by negotiation”.

6.21 For example, in *Questions Relating to the Obligation to Extradite or Prosecute*, the relevant jurisdictional provision was that contained in Article 30, paragraph 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (*CAT*), which, like Article 84 of the Chicago Convention, requires that for the Court to have jurisdiction the dispute must be one that “cannot be settled through negotiation”:

“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

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<sup>418</sup> *Ibid.*, p. 128, para. 140; see also *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*, .C.J. Reports 2017, pp. 120-121, paras 40 and 44; and *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018*, p. 11, para. 29: Art. 22 of the CERD establishes “procedural preconditions to be met before the seisin of the Court”).

International Court of Justice by request in conformity with the Statute of the Court.”<sup>419</sup>

6.22 As in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination*, the Court proceeded on the basis that the requirement in Article 30, paragraph 1 of the CAT that the dispute “cannot be settled through negotiation” constituted a precondition to its jurisdiction. Having concluded that there existed a “dispute” between the parties, the Court turned to consider:

“the other conditions which should be met for it to have jurisdiction under Article 30, paragraph 1, of the Convention against Torture . . . These conditions are that the *dispute cannot be settled through negotiation* and that, after a request for arbitration has been made by one of the parties, they have been unable to agree on the organization of the arbitration within six months from the request.”<sup>420</sup>

6.23 Similarly, in its Provisional Measures Order in *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. Russia)*, the Court assimilated and treated as having equivalent effect the jurisdictional provision in Article 22 of the CERD (which, as noted at paragraph 6.18 above, requires that a dispute must be one “which is not settled by negotiation”), and Article 24, paragraph 1 of the ICSFT (which

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<sup>419</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed at New York on 10 December 1984, entered into force on 26 June 1987, 1465 UNTS 85 (*CAT*), Art. 30(1) (emphasis added).

<sup>420</sup> *Questions Relating to the Obligation to Extradite or Prosecute (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 445, para. 56 (emphasis added).

stipulates that the dispute must be one which “cannot be settled through negotiations within a reasonable time”<sup>421</sup>.

6.24 The Court observed that both provisions “set out procedural preconditions to be fulfilled before the seisin of the Court.”<sup>422</sup> Further, having summarized the procedural preconditions contained in each provision in turn (including their respective requirements of negotiations)<sup>423</sup>, the Court made reference to “the negotiations to which both compromissory clauses refer”<sup>424</sup>.

6.25 Given the express reference to negotiations and the similarity of its formulation to the provisions at issue in the cases discussed above, the requirement of Article 84 of the Chicago Convention that the dispute is one that “cannot be settled by negotiations” likewise is to be understood as establishing a precondition to the exercise of the ICAO Council’s jurisdiction (and indeed to the effective seisin of the ICAO Council by the Applicant).

#### B. CONTENT OF THE PRECONDITION OF NEGOTIATION

6.26 Not only does the Court’s case law clearly establish that a provision framed in terms similar to Article 84 of the Chicago Convention constitutes a

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<sup>421</sup> CERD, Art. 22; **Vol. II, Annex 12**, ICSFT, Art. 24(1).

<sup>422</sup> *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. 120, para. 40.

<sup>423</sup> *Ibid.*, paras 41-42.

<sup>424</sup> *Ibid.*, pp. 120-121, para. 43. See also *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections*, Judgment of 6 June 2018, p. 25, para. 75 (where the requirement in Article 35(2) of the Palermo Convention that the dispute should be one that “cannot be settled through negotiation within a reasonable time” was described as one of a number of “procedural requirements before a State party may refer a dispute to the Court”).

precondition to jurisdiction, but in addition, it clearly identifies what is required in order to comply with the precondition.

6.27 In this regard, the starting point is that Article 84 of the Chicago Convention requires that any negotiations must be undertaken with a view to “settl[ing]” the disagreement. Thus, on its clear terms, Article 84 imposes a concrete obligation on the claimant party to attempt negotiations with a view to settling the disagreement before submitting the dispute to the ICAO Council.

6.28 In its judgment in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination*, the Court provided guidance as to the characteristics of the negotiations required for the purposes of the “precondition of negotiation” contained in Article 22 of the CERD. It explained:

“In determining what constitutes negotiations, the Court observes that negotiations are distinct from mere protests or disputations. Negotiations entail more than the plain opposition of legal views or interests between two parties, or the existence of a series of accusations and rebuttals, or even the exchange of claims and directly opposed counter-claims. As such, the concept of ‘negotiations’ differs from the concept of ‘dispute’, and requires—*at the very least—a genuine attempt by one of the disputing parties to engage in discussions with the other*

*disputing party, with a view to resolving the dispute*”<sup>425</sup>.

6.29 It later also clarified:

“Manifestly, in the absence of evidence of a genuine attempt to negotiate, the precondition of negotiation is not met. However, where negotiations are attempted or have commenced . . . the precondition of negotiations is met only when there has been a failure of negotiations, or when negotiations have become futile or deadlocked”.<sup>426</sup>

6.30 As the above passage demonstrates, the requirement that there should be a “genuine attempt to negotiate” necessarily requires that some attempt to negotiate should in fact have been made. For instance, in *Obligation to Extradite or Prosecute*, the Court quoted from the decision in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russia)*, and then observed:

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<sup>425</sup> *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*, p. 132, para. 157 (emphasis added); see also *Questions Relating to the Obligation to Extradite or Prosecute (Belgium v. Senegal), Judgment, I.C.J. Reports 2012*, p. 446, para. 57; *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*, pp. 120-121, para. 43.

<sup>426</sup> *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*, p. 133, para. 159; see also *Questions Relating to the Obligation to Extradite or Prosecute (Belgium v. Senegal), Judgment, I.C.J. Reports 2012*, pp. 445-446, para. 57; *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*, pp. 120-121, para. 43.

“The requirement that the dispute ‘cannot be settled through negotiation’ *could not be understood as referring to a theoretical impossibility* of reaching a settlement. It rather implies that, as the Court noted with regard to a similarly worded provision, ‘no reasonable probability exists that *further* negotiations would lead to a settlement’ (*South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 345).”<sup>427</sup>

6.31 As the Court has also made clear, to satisfy the “precondition of negotiation”, the negotiations, or the attempt to initiate negotiations, must directly concern the disagreement between the two States submitted for adjudication and must have particularly addressed (or at least have sought to address) the specific question of interpretation or application of the treaty that gives rise to the dispute between the parties. As explained in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russia)* in respect of the precondition of negotiation contained in Article 22 of the CERD:

“[T]o meet the precondition of negotiation in the compromissory clause of a treaty, these negotiations must relate to the subject-matter of the treaty containing the compromissory clause. In other words, the subject-matter of the negotiations must relate to the subject-matter of the dispute which, in turn, must

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*Questions Relating to the Obligation to Extradite or Prosecute (Belgium v. Senegal), Judgment, I.C.J. Reports 2012*, p. 446, para. 57 (emphasis added). See also *Mavrommatis Palestine Concessions, 1924, P.C.I.J., Series A, No. 2*, p. 13, where the Permanent Court’s discussion of when the precondition of negotiation might be held to be fulfilled proceeded on the basis that “discussion should have been commenced”.

concern the substantive obligations contained in the treaty in question.”<sup>428</sup>

C. THE PRECONDITION OF NEGOTIATIONS MUST BE FULFILLED PRIOR TO SEISIN

6.32 As already mentioned, in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russia)*, the Court concluded that the requirements contained in the jurisdictional clause in Article 22 of the CERD (including the precondition of negotiations) constituted “preconditions to be fulfilled *before the seisin* of the Court”<sup>429</sup>, and, further that it “imposes preconditions which must be satisfied *before resorting to the Court*”<sup>430</sup>.

6.33 Previously, in the *South West Africa* cases, where the relevant jurisdictional provision in the mandate stipulated that jurisdiction extended only to disputes which “cannot be settled by negotiation”, the Court had regarded it

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<sup>428</sup> *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, p. 133, para. 161; see also *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, pp. 120-121, para. 43.

<sup>429</sup> *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, p. 128, para. 141 (emphasis added).

<sup>430</sup> *Ibid.*, p. 130, para. 148 (emphasis added). See also, e.g., *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. 120, para. 40; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, p. 11, para. 29. See also the precondition of negotiations contained in Article 35 of the Palermo Convention, which constitutes one of a number of “procedural requirements before a State party may refer a dispute to the Court”, *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment of 6 June 2018, p. 25, para. 75.

as self-evident that the “the alleged impossibility of settling the dispute obviously could only refer to the time when the Applications were filed”<sup>431</sup>.

6.34 The Court’s approach in this regard reflects the more general and well-established approach apparent from the Court’s jurisprudence to the effect that all matters impacting upon jurisdiction, in principle, fall to be assessed as at the date of the filing of the application. For instance, in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, the Court reiterated what it regarded as:

“the general rule which it applies in this regard, namely: ‘the jurisdiction of the Court must normally be assessed on the date of the filing of the act instituting proceedings’ (to this effect, see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 613, para. 26; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 26, para. 44). . . .

it is normally by reference to the date of the filing of the instrument instituting proceedings that it must be determined whether those conditions are met”<sup>432</sup>.

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*South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 344.

## **Section 2. Qatar failed to satisfy the jurisdictional precondition of negotiations before filing its ICAO Application**

6.35 As noted above, the Second Preliminary Objection made by the Appellants against the jurisdiction of the ICAO Council was based on Qatar's non-compliance with Article 84 of the Chicago Convention. In the alternative, the Appellants also objected that Qatar's non-compliance with the requirements of Article 2(g) of the ICAO Rules rendered its claims inadmissible.

6.36 The first, jurisdictional limb of the objection is made in light of the Court's constant and consolidated jurisprudence in respect of the interpretation and effects of a precondition of negotiation contained in the jurisdictional provision of a treaty framed in terms similar or identical to those in Article 84 of the Chicago Convention. According to this jurisprudence, Qatar was required at the very least to make a genuine attempt to initiate negotiations with the Appellants prior to submitting the disagreement to the ICAO Council. Further, Qatar was required to attempt negotiations concerning the specific subject-matter of its claims of breach of the Chicago Convention.

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*Application of the Convention on the Prevention and Punishment of the Crime of Genocide, (Croatia v. Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, pp. 437-438, para. 79; see also e.g., *Mavrommatis Palestine Concessions, 1924, P.C.I.J., Series A, No. 2*, p. 16: "The Court, before giving judgment on the merits of the case, will satisfy itself that the suit before it, in the form in which it has been submitted and on the basis of the facts hitherto established, falls to be decided [under the applicable compromissory clause]"; *Nottebohm Case (Liechtenstein v. Guatemala) (Preliminary Objection, Judgment, I.C.J. Reports 1953*, p. 123; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 28, para. 36; *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*, p. 85, para. 30: "[t]he dispute must in principle exist at the time the Application is submitted to the Court".

6.37 Notably, before the ICAO Council, Qatar did not seriously contest the Appellants' position as to the interpretation and effect of Article 84 of the Chicago Convention, and in particular their position that:

- (a) Article 84 of the Chicago Convention contains a precondition of negotiation which constitutes a limit upon the consent of the Contracting States, and which must be satisfied before the ICAO Council can have jurisdiction to adjudicate upon a disagreement submitted to it<sup>433</sup>;
- (b) both as a matter of the ordinary meaning of the words of Article 84 of the Chicago Convention, and as a matter of the clear criteria that this Court has specified in relation to similarly worded clauses, the precondition of negotiations “requires – at the very least – a *genuine attempt* by one of the disputing parties to engage in discussions with the other disputing party, with a view to resolving the dispute.”<sup>434</sup>

6.38 Further, the position adopted by Qatar in its submissions before the ICAO Council, as well as the material put forward and relied upon by Qatar itself before the ICAO Council in support of its position, demonstrates that it never made a genuine attempt to initiate negotiations with the Appellants in relation to the subject-matter of the claims in the two Applications subsequently submitted to the ICAO Council with a view to resolving that dispute. As a consequence, it failed to fulfil the precondition of negotiations under Article 84 of the Chicago Convention.

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<sup>433</sup> **Vol. III, Annex 24**, ICAO Preliminary Objections, paras 80-89.

<sup>434</sup> *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*, p. 132, para. 157 (emphasis added); see **Vol. III, Annex 24**, ICAO Preliminary Objections, paras 90-94.

6.39 In its ICAO Application and Memorial, Qatar acknowledged that no efforts to initiate negotiations had been undertaken, and it instead sought to argue that any such attempts would have been futile<sup>435</sup> (Subsection A).

6.40 Following the filing by the Appellants of their Preliminary Objections, by contrast, Qatar's position underwent a marked (and remarkable) change that was fundamentally inconsistent with the position originally adopted (Subsection B). In particular, in its subsequent submissions (most notably its Response and thereafter at the hearing), Qatar instead sought to argue that it had nevertheless *de facto* engaged in negotiations or had made a genuine attempt to initiate negotiations which satisfied the precondition of negotiations under Article 84. It further argued that supposed efforts to initiate negotiations undertaken after the filing of the ICAO Application and Memorial and commencement of the proceedings before the ICAO Council were sufficient in this regard.

6.41 Despite putting forward a large volume of evidence in support of its new position, Qatar was still unable to demonstrate that it had made a genuine attempt to initiate negotiations in relation to the specific subject matter of the disagreement, whether before or after the filing of the ICAO Application.

6.42 Each of Qatar's arguments by which it sought to demonstrate that it has complied with the precondition of negotiations in Article 84 of the Chicago Convention is flawed, either because it is unsupported by the factual record or is without merit as a matter of law. Nevertheless, in upholding its jurisdiction,

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<sup>435</sup> See **Vol. III, Annex 23**, ICAO Application, and **Vol. III, Annex 23**, ICAO Memorial, Sec. (g). Cf. **Vol. III, Annex 24**, ICAO Preliminary Objections, paras 100-106.

and rejecting the Appellants' Preliminary Objections in this regard, the ICAO Council erred either in fact or as a matter of law.

#### A. QATAR'S INITIAL POSITION IN THE ICAO MEMORIAL

6.43 In neither Qatar's initial ICAO Application nor the accompanying ICAO Memorial did Qatar seek to demonstrate that it either engaged in negotiations with the Appellants or that it made any attempt whatsoever to initiate negotiations in relation to the disagreements or disputes submitted to the ICAO Council<sup>436</sup>.

6.44 In the ICAO Memorial, under the heading "g) A statement of attempted negotiations", Qatar asserted as follows:

"The Respondents did not permit any opportunity to negotiate the aviation aspects of their hostile actions against the State of Qatar. They repeatedly gave an ultimatum to the State of Qatar on matters unrelated to air navigation and air transport. The last contact with the Respondents was a conference call with officials of the Respondents on 5 and 6 June 2017 that did not result in any understanding. In fact, the crisis gradually escalated when the Respondents declared all Qatar's citizens and resident 'undesirable' (persona non grata) in their territories and ordered them to leave the Respondents' territories within 14 days. The severance of diplomatic relations makes further negotiating efforts futile."<sup>437</sup>

6.45 Read as a whole, and taken together with the complete lack of any evidence of attempts to initiate negotiations put forward with the ICAO

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<sup>436</sup> Vol. III, Annex 24, ICAO Preliminary Objections, paras 100-106.

<sup>437</sup> Vol. III, Annex 23, ICAO Memorial, Sec. (g).

Application and Memorial, that statement constitutes a clear and candid admission by Qatar that it failed to make any attempt prior to the filing of its Application to engage in negotiations with the Appellants in relation to the disagreement that it claims to be the subject of its Application. As a consequence, Qatar also implicitly admitted that it did not comply with the jurisdictional precondition of negotiations under Article 84 of the Chicago Convention.

6.46 The principal thrust of the position initially taken by Qatar in its ICAO Memorial was that the Appellants “did not permit any opportunity” to negotiate, and that, in light of the severance of diplomatic relations, any attempt to initiate negotiations in relation to the disagreement under the Chicago Convention would have been “futile”.

6.47 Not only is that position self-serving, but, as noted at paragraphs 6.26-6.30 above, the Court’s jurisprudence makes clear that the precondition of negotiations requires, at the least, a “genuine attempt” to initiate negotiations. The futility of negotiations cannot be established until at least a genuine attempt to initiate such negotiations has been made.

6.48 The policy rationales underlying the precondition of negotiations in Article 84 of the Chicago Convention would be frustrated if an Applicant were permitted to unilaterally declare that negotiations would be futile before even attempting to initiate them. If it were otherwise, the precondition of negotiations would easily be circumvented.

6.49 The only contact with the Appellants mentioned by Qatar in its ICAO Memorial dating from after the announcement of the airspace restrictions was the “conference call” which supposedly took place between its officials and officials of the Appellants on 5 and 6 June 2017.

6.50 The Appellants are not aware of any “conference call” on 5 and 6 June 2017 by which Qatar sought to discuss the subject-matter of the airspace restrictions in the light of the Appellants obligations under the Chicago Convention, and Qatar put forward no evidence substantiating its assertions as to the occurrence of calls on those dates or evidencing their content. The only calls from early June 2017 of which the Appellants are aware were technical calls seeking clarifications as to the NOTAMs issued to implement the airspace restrictions.

6.51 In any event, the supposed conference call (or calls) on 5 and 6 June 2017 were not relied upon by Qatar as constituting an attempt to initiate negotiations, but were instead only mentioned as being the “last contact” with the Appellants<sup>438</sup>. In its subsequent submissions, Qatar made no mention of these supposed calls and did not attempt to suggest that they amounted to either negotiations or an attempt to initiate negotiations.

6.52 Qatar’s invocation of and reliance on the fact that the Appellants had allegedly declared Qatari citizens *persona non grata* and broken off diplomatic relations is also flawed and irrelevant. The situation of the nationals of State A present in State B is self-evidently of no import for the ability of State A to seek to initiate negotiations with State B.

6.53 Similarly, the severance of diplomatic relations does not render the initiation of negotiations impossible and does not constitute a valid justification for a failure to attempt to initiate negotiations as required by Article 84 of the Chicago Convention:

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See *ibid.*

- (a) First, as confirmed by Article 63 of the Vienna Convention on the Law of Treaties “[t]he severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty”.
- (b) Second, absence of diplomatic relations does not constitute an obstacle to the ability of a State to attempt to initiate negotiations; the Court has never previously held that an applicant State was excused from complying with a requirement in a jurisdictional provision requiring an attempt to settle the dispute through negotiations or that the dispute had not been adjusted through diplomacy merely on the basis that the parties did not at the relevant time maintain diplomatic relations<sup>439</sup>.

As a result, Qatar remained bound to make a “genuine attempt” to settle the disagreement through negotiation prior to submitting it to the ICAO Council.

6.54 In this regard, it is recalled that, in the immediate aftermath of the adoption of the airspace restrictions by the Appellants, Qatar filed with the ICAO two Applications and Memorials dated 8 June 2017. As discussed in Chapter III, those initial applications proved abortive, as they were rejected by the ICAO Secretariat due to the presence of a number of defects.

6.55 Significantly, the section of those documents entitled “Report of negotiations”, which appear to have been intended to comply with the requirements of Article 2(g) of the ICAO Rules (and thereby to substantiate compliance with the requirement of prior negotiation under Article 84 of the

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<sup>439</sup> Cf. *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Judgment, *I.C.J. Reports 1980*, p. 3; *Oil Platforms (Iran v. United States of America)*, Preliminary Objection, Judgment, *I.C.J. Reports 1996*, pp. 809-810, para. 16; *Oil Platforms (Iran v. United States of America)*, Merits, Judgment, *I.C.J. Reports 2003*, pp. 210-211, paras 106-107.

Chicago Convention) was of essentially similar content to that subsequently contained in the Applications filed with ICAO on 30 October 2017. In a similar fashion to the Memorials accompanying Qatar's later Applications which underlie the present proceedings, Qatar's central position in the Memorials accompanying its initial abortive Applications was that "all diplomatic ties between the nations concerned have been ruptured" and "negotiations are no longer possible."<sup>440</sup> A similar statement was contained in its Request under Article 54(n) of the Chicago Convention, dated 15 June 2017<sup>441</sup>.

6.56 Despite the significant period of time between the initial abortive applications of 8 June 2017 and the filing of the second applications on 30 October 2017, Qatar nevertheless undertook no efforts to initiate negotiations with the Appellants in relation to the subject-matter of the disagreement prior to filing the second applications with the ICAO Council.

6.57 A complete failure even to attempt to initiate negotiations cannot satisfy the requirement of prior negotiations contained in a clause such as Article 84 of the Chicago Convention. In the absence of any evidence of a genuine attempt to initiate negotiations with a view to settling the dispute, Qatar cannot establish that negotiations would have been unsuccessful in resolving the dispute.

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<sup>440</sup> **Vol. III, Annex 22**, Request for the Intervention of the ICAO Council in the Matter of the Actions of the Arab Republic of Egypt, the Kingdom of Saudi Arabia, the United Arab Emirates and the Kingdom of Bahrain to close their Airspace to aircraft registered in the State of Qatar, attaching Application (1) of the State of Qatar, Complaint Arising under the International Air Services Transit Agreement done in Chicago on December 7, 1944, and Application (2) of the State of Qatar, Disagreement Arising under the Convention on International Civil Aviation done in Chicago on December 7, 1944, 8 June 2017 and Memorials for Application (1) and (2), p. 6.

<sup>441</sup> **Vol. V, Annex 31**, Request of the State of Qatar for Consideration by the ICAO Council under Article 54(n) of the Chicago Convention, 15 June 2017, p. 10.

6.58 To the extent that the ICAO Council may have rejected the Appellants' Preliminary Objections on the basis that negotiations were not required because they would have been "futile", it erred and this Court should hold that the ICAO Council was without jurisdiction due to a failure by Qatar to comply with the precondition of negotiations contained in Article 84 of the Chicago Convention.

B. QATAR'S NEW POSITION IN ITS RESPONSE TO THE PRELIMINARY OBJECTIONS

6.59 Although, as discussed above, Qatar's ICAO Memorial acknowledged that it had not attempted to initiate negotiations in respect of the disagreement submitted to the ICAO Council, in its Response to the Preliminary Objections, Qatar substantially changed tack and claimed that in fact it had negotiated or attempted to initiate negotiations.

6.60 None of the material put forward by Qatar in support of that new position, however, supports its position. There was thus no basis on which the ICAO Council could properly have concluded that Qatar had complied with the precondition of negotiation contained in Article 84 of the Chicago Convention.

6.61 Rather, examination of Qatar's Response to the Preliminary Objections and the accompanying exhibits submitted before the ICAO Council in fact confirms the absence of any "genuine attempt" by Qatar to settle the disagreement by negotiation with the Appellants. Instead, what the exhibits clearly demonstrate is that the tactic adopted by Qatar was publicly to assert its openness to dialogue and its willingness to negotiate, but then to take no concrete steps actually to attempt to initiate negotiations. In addition, it is telling that none of the exhibits produced by Qatar demonstrate any attempt by Qatar to initiate negotiations on the specific topic of the airspace restrictions.

6.62 Accordingly, the ICAO Council erred in fact and in law in rejecting the Appellants' Second Preliminary Objection based on a failure to comply with the precondition of negotiations. It should instead have held that it was without jurisdiction over the disagreement.

*1. Qatar's supposed attempts to negotiate within ICAO and other international bodies*

6.63 Qatar argued for the first time in its Response to the Preliminary Objections that there had "been negotiations between the parties within the framework of ICAO"<sup>442</sup>. In support of that allegation, Qatar referred to six letters written by Qatar to the President of the ICAO Council or the ICAO Secretary General and to the record of the Council's Extraordinary Session of 31 July 2017<sup>443</sup>.

6.64 None of these documents, however, evidence prior negotiations in relation to the matters at issue in Qatar's ICAO Application, or any attempt by Qatar to initiate such negotiations.

6.65 The six letters referred to by Qatar<sup>444</sup> were addressed to either the President of the ICAO Council or to the Secretary General of ICAO rather than to the Appellants. Moreover, nowhere in these letters was there any invitation to negotiate addressed to the Appellants; Qatar never attempted to explain how letters not addressed to the Appellants could constitute such an invitation.

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<sup>442</sup> **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, paras 112-120 and exhibits 1-6.

<sup>443</sup> See *ibid.*, paras 112, 113 and 120.

<sup>444</sup> *Ibid.*, para. 112.

6.66 As a consequence, the letters cannot be regarded (and could not have been regarded by the ICAO Council) as constituting a “genuine attempt to negotiate” for the purposes of the precondition of negotiations in Article 84 of the Chicago Convention.

6.67 As for the discussion at the ICAO Council Extraordinary Session of 31 July 2017, held pursuant to Qatar’s request under Article 54(n) of the Chicago Convention, at no point did Qatar indicate that it sought to pursue negotiations in respect of the claims it subsequently sought to bring to the ICAO Council under Article 84 of the Chicago Convention, and at no point did any such negotiations take place. In any event, again, Qatar’s requests under Article 54(n) were directed to the Council and not to the Appellants.

6.68 Further, although in the Article 54(n) proceedings Qatar made various allegations of breach by the Appellants of their obligations under the Chicago Convention and the IASTA, that is insufficient to characterize those proceedings as involving negotiations that satisfy the precondition of negotiations in Article 84. As discussed at paragraph 6.28 above, and as the Court has made clear, the concept of negotiations is distinct from that of a “dispute”, and negotiations are categorically different from “mere protests or disputations”, “the plain opposition of legal views . . . between two parties”, or “the exchange of claims and directly opposed counter-claims”<sup>445</sup>. Whilst the

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<sup>445</sup> *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*, p. 132, para. 157; see also *Questions Relating to the Obligation to Extradite or Prosecute (Belgium v. Senegal), Judgment, I.C.J. Reports 2012*, p. 446, para. 57; *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*, pp. 120-121, para. 43.

type of negotiations foreseen and required by the precondition of negotiations necessarily presupposes the existence of a dispute, what characterizes negotiations and sets them apart is a “genuine attempt . . . to engage in discussions . . . with a view to *resolving the dispute*”<sup>446</sup>.

6.69 In any event, as reflected in the summary of the Session, the ICAO Council was careful to emphasise:

“the need to clearly differentiate between any actions that it, as a governing body, might consider taking in relation to Article 54 n) of the Convention on International Civil Aviation . . . and any actions that it might consider taking in relation to Article 84 thereof, which provided a process for the settlement of any disagreement between Contracting States concerning the interpretation or application of the Convention and its Annexes *which cannot be settled by negotiation.*”<sup>447</sup>

6.70 Qatar also sought to suggest that the meetings coordinated by the ICAO MID Office to review contingency routes in some manner satisfied the requirement of prior negotiations under Article 84. The discussions, however, were at a technical level and in any event did not address either the disagreement submitted by Qatar supposedly relating to the interpretation or

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<sup>446</sup> *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*, p. 132, para. 157 (emphasis added); see also *Questions Relating to the Obligation to Extradite or Prosecute (Belgium v. Senegal), Judgment, I.C.J. Reports 2012*, p. 446, para. 57; *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, Judgment, I.C.J. Reports 2017*, pp. 120-121, para. 43.

<sup>447</sup> **Vol. III, Annex 24**, ICAO Preliminary Objections, Exhibit 22, Summary Minutes of Extraordinary Session of the Council, 31 July 2017, ICAO document C-WP/14640 (Restricted), para. 2 (emphasis added).

application of the Chicago Convention or its Annexes or the wider issues that in reality underlie and form part of that dispute. Again, those discussions could not properly have been regarded by the ICAO Council as an attempt by Qatar to initiate negotiations with a view to settling the disagreement before submitting the dispute to the Council.

6.71 Qatar also sought to invoke actions taken by it before other international fora, including in particular its requests for consultations addressed to Bahrain, Saudi Arabia and the UAE within the context of the World Trade Organization, as constituting attempts to initiate negotiations. Those requests, however, likewise are insufficient to constitute a “genuine attempt” to negotiate in respect of the disagreement.

6.72 First, and most obviously, no such request was made in respect of Egypt and clearly cannot constitute an attempt to initiate negotiations in its regard.

6.73 Second, and in any case, the requests cannot properly be regarded as constituting either negotiations or an attempt to initiate negotiations, even in respect of the artificially narrow disagreement that Qatar purported to submit to the ICAO Council. As already noted at paragraph 6.31 above, the Court has made clear that in order to satisfy the precondition of negotiations, “the subject-matter of the negotiations must relate to the subject-matter of the dispute which, in turn, must concern the substantive obligations contained in the treaty in

question”<sup>448</sup>. The requests for consultations relied upon by Qatar, however, made no mention of the relevant obligations contained in the Chicago Convention and IASTA that Qatar alleged in its Applications and Memorials had been breached.

## 2. *Qatar’s other supposed attempts to initiate negotiations*

6.74 In addition, Qatar in its Response to the Preliminary Objections sought to rely upon a long list of press statements and press reports of interviews and statements allegedly made to officials of third States in an attempt to show that it attempted to negotiate with the Appellants. Even if those statements were in fact made, and the reports of them put forward by Qatar were accepted as being true and accurate, these statements would not assist Qatar in meeting its burden of showing that there was a “genuine attempt” by it to settle the disagreement by initiating negotiations prior to submission of the disagreement to ICAO Council.

6.75 First, a significant proportion of the statements and other materials relied upon (in particular those discussed at paragraphs 190-200 of Qatar’s Response to the Preliminary Objections and annexed as Exhibits 75 to 85 thereto) were made after the date of filing of Qatar’s ICAO Application on 30 October 2017. In light of the well-established rule, discussed at paragraphs 6.32-6.34 above, that compliance with any preconditions for jurisdiction must be fulfilled as at the date of seisin, statements made after the date of Qatar’s

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<sup>448</sup> *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*, p. 133, para. 161; see also *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*, pp. 120-121, para. 43.

ICAO Application cannot be relied upon as evidencing compliance with the precondition of negotiations contained in Article 84 of the Chicago Convention and the IASTA.

6.76 Second, the vast majority of the materials relied upon by Qatar were not addressed to the Appellants, but instead were either addressed to third parties and subsequently reported in the media or constitute press releases issued by Qatar to the world at large. As such, they cannot constitute a “genuine attempt” to initiate negotiations with the Appellants.

6.77 Qatar itself admitted in its Response to the Preliminary Objections that there were “few direct contacts between the parties”<sup>449</sup>. In fact, the only instance of direct contact with any of the Appellants alleged by and relied upon by Qatar occurring prior to the filing of the ICAO Application on 30 October 2017 is a purported telephone conversation between representatives of Qatar and Saudi Arabia on 8 September 2017<sup>450</sup>. That contact, however, also could not have been relied upon by the ICAO Council as showing that Qatar had sought to initiate negotiations.

6.78 First, the evidence of the content of the supposed conversation is unreliable. It is striking that no official source is cited by Qatar in this regard, and Qatar relies only on press reports as to the supposed content of the conversation. At a minimum, one would have expected Qatar’s assertion as to the content of the call to have been backed up by a transcript or contemporaneous note or an official statement from Qatar. By contrast, a contemporaneous official Saudi Press Release immediately contested the

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<sup>449</sup> Vol. IV, Annex 25, ICAO Response to the Preliminary Objections, para. 176.

<sup>450</sup> *Ibid.*

reports in the Qatari press as to the call's content<sup>451</sup>. Qatar bore the burden of proof in this regard, and its unsupported assertions as to the supposed contents of the call are an insufficient basis on which the ICAO Council could have reached any findings of fact in this regard.

6.79 Second, in any event, it is notable that Qatar did not itself claim that it offered to negotiate in that phone call. Further, and whilst the contents of the call are disputed, it is striking how tentative Qatar was as to the contents of the conversation between the Emir of Qatar and the Crown Prince of the Kingdom of Saudi Arabia, limiting itself to stating that "it seems both stressed the need to resolve the crisis by sitting down to dialogue."<sup>452</sup>

6.80 Third, it is also notable that Qatar does not assert, and neither party at any point claimed (or is reported as having claimed) that there had been any specific discussion at the alleged call as to the matters that Qatar alleges to be the subject of its claims to the ICAO Council, namely, compliance with relevant international obligations in the field of civil aviation, including in particular obligations under the Chicago Convention and the IASTA.

6.81 Fourth, even if the content of the discussion at the alleged call had been as Qatar suggested, such a discussion as to the need for dialogue, couched in the most general terms, and in the context of a far-wider dispute between the Parties, self-evidently does not constitute either negotiations in relation to the interpretation or application of the Chicago Convention or an attempt to initiate negotiations in that regard.

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<sup>451</sup> *Ibid.*, para. 180.

<sup>452</sup> *Ibid.*, para. 176.

6.82 Finally, and in any event, even reviewing the data in the light most favourable to Qatar, the purported phone call on 8 September 2017 was only with Saudi Arabia. There is no suggestion by Qatar (nor any evidence) that Qatar at any point attempted to contact any of the other Appellants in order to seek to initiate negotiations. Neither did it make any genuine attempt to do so through other channels, such as via the Emir of Kuwait.

6.83 Quite apart from the fact that they were not addressed to the Appellants and did not constitute an invitation to negotiate, the long catalogue of press statements, interviews, and statements allegedly made to officials of third States or the world at large are insufficient to satisfy the precondition of negotiations as they did not deal with the specific subject-matter of Qatar's claims, despite Qatar's subsequent attempt to frame them as such before the ICAO Council.

6.84 As already noted at paragraph 6.31 above, the Court's constant approach in this regard is that in order to satisfy the precondition of negotiations, "the subject-matter of the negotiations must relate to the subject-matter of the dispute which, in turn, must concern the substantive obligations contained in the treaty in question"<sup>453</sup>.

6.85 None of the statements relied upon by Qatar before the ICAO Council, however, refers to issues relating to the interpretation and application of the Chicago Convention, and which, in Qatar's view, form the subject-matter of the

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<sup>453</sup> *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*, p. 133, para. 161; see also *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*, para. 43.

disagreement between the Parties. Nor do any of those materials even refer more generally to aviation matters.

6.86 Further, even if it were to be accepted, purely for the sake of argument, that the various statements were in fact made, and the reports of them put forward by Qatar are true and accurate, on their face these statements in any event do not establish that Qatar ever made a “genuine attempt” to settle the disagreement or dispute by seeking to initiate negotiations prior to submission of its Applications to the ICAO Council. Instead, it is striking that all of these so-called attempts to initiate negotiations relate to the crisis as a whole, thereby contradicting Qatar’s claim that the dispute before the Court is restricted to the Chicago Convention and its Annexes only.

6.87 In that regard, as discussed in Chapter V, by its pleadings before the ICAO Council, Qatar sought to artificially characterize the “core issue” in this case as one limited only to “the disagreement relating to the interpretation or application of the Chicago Convention and its Annexes”<sup>454</sup>. By contrast, the Appellants take the position that the “real issue” in this case concerns wider matters as set out in Chapter II, which are outside the ICAO Council’s jurisdiction.

6.88 If, however, the disagreement is to be understood as relating solely to breaches of the Chicago Convention and its Annexes, as Qatar alleges, then it follows that the required attempt to initiate negotiations must relate specifically to the alleged breach of the Chicago Convention and its Annexes. Yet, none of the statements offered by Qatar as evidence of negotiations or of attempts at negotiation refers to the Chicago Convention and its Annexes. They are entirely

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<sup>454</sup>

**Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, para. 43; see also, *ibid.*, para. 44.

general statements as to Qatar’s alleged willingness “to sit and talk”<sup>455</sup> or the “importance of dialogue”<sup>456</sup>.

6.89 Qatar cannot have it both ways. It cannot on the one hand claim in its Response to the Preliminary Objections based on the lack of the Council’s competence in respect of issues relating to countermeasures that the dispute does not involve wider issues, while on the other simultaneously arguing that vague references to a broader political dialogue or mediation satisfy the requirement of prior negotiations (which are required to specifically address the subject-matter of the dispute and the relevant obligations at issue). If Qatar seeks to insist that the dispute is not about the wider issues between the Parties, it must necessarily concede that the materials it relied upon cannot satisfy the requirement of negotiations in Article 84. Conversely, if Qatar claims that the references to a broader political dialogue satisfy the prior negotiations requirement in Article 84, it must necessarily concede that the dispute is about wider issues that fall outside the ICAO Council’s jurisdiction.

*3. Qatar’s legal arguments in its Response to the Preliminary Objections are flawed*

6.90 In support of its position that it had fulfilled the precondition of negotiations, Qatar in its Response to the Preliminary Objections attempted to argue that negotiations need not be attempted prior to filing an application with

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<sup>455</sup> *Ibid.*, para. 128; and **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, Exhibit 17, “Foreign Minister: Qatar ‘Willing to Talk’ to Resolve Diplomatic Crisis”, Qatar, Ministry of Foreign Affairs, 6 June 2017.

<sup>456</sup> **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, para. 162; and **Vol. IV, Annex 25**, ICAO Response to the Preliminary Objections, Exhibit 48, “Foreign Minister Meets Turkish Minister of Foreign Affairs”, Ankara Information Office, Qatar, Ministry of Foreign Affairs, 14 July 2017.

the ICAO Council and that it is sufficient if negotiations are attempted after an application has been submitted<sup>457</sup>.

6.91 Qatar's argument finds no support in the text of Article 84 of the Chicago Convention. Rather, the approach suggested by Qatar is in direct contradiction with the express terms of that provision, which require that an attempt to settle the disagreement through negotiation must have been made prior to submitting an application to the Council. Notably, Qatar put forward no support for its position in that regard.

6.92 Further, Qatar's suggestion that the requirement that the precondition of negotiations must be satisfied prior to seisin is "not as settled in law as the Respondents claim"<sup>458</sup> is self-evidently flawed. Qatar's selective quotation on the observations of the Court in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* are a futile attempt to escape from the fact that the Court subsequently in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russia)* denied that it had jurisdiction in circumstances in which negotiations had not been attempted prior to the seisin of the Court. The same is true *a fortiori* of Qatar's reliance upon the joint opinion of the five dissenting judges in that latter case.

6.93 Qatar's suggestion in its Response to the Preliminary Objections that "negotiations are futile and the parties are deadlocked, and that the disagreement cannot be settled by negotiations"<sup>459</sup>, once again ignores the

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<sup>457</sup> Vol. IV, Annex 25, ICAO Response to the Preliminary Objections, paras 99-101.

<sup>458</sup> *Ibid.*, para. 99.

<sup>459</sup> *Ibid.*, para. 209.

holding of the Court in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russia)*<sup>460</sup>. In light of that decision, it is clear that where the relevant jurisdictional provision contains a precondition of negotiation, it is impermissible for a State not to make any attempt to negotiate and then simply to assert that any negotiations, if attempted would have been futile – at the least a genuine attempt to negotiate must have been made.

6.94 In the absence of any attempt to initiate negotiations, Qatar’s claim that negotiations would be “futile” cannot properly be based on any express or implied rejection or refusal of negotiations by the Appellants. No attempt was ever made by Qatar to initiate negotiations, so it cannot be said that they would have been futile.

### C. CONCLUSION

6.95 In sum, Qatar failed to put forward any evidence before the ICAO Council establishing that it attempted to negotiate with the Appellants prior to submitting the disagreement to the ICAO Council on any characterization of the subject-matter in dispute. In the circumstances, the ICAO Council erred in asserting jurisdiction, as Qatar failed to comply with the precondition of negotiations contained in Article 84 of the Convention. Consequently, this Court should hold that the ICAO Council was without jurisdiction to rule upon

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<sup>460</sup> *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*, p. 132, para. 157; see also *Questions Relating to the Obligation to Extradite or Prosecute, (Belgium v. Senegal), I.C.J. Reports 2012*, pp. 27-28, para. 57; *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*, pp. 120-121, para. 43.

the disagreement submitted to it by Qatar in the ICAO Application relating to the Chicago Convention.

**Section 3. Qatar’s claim is inadmissible due to its failure to comply with Article 2(g) of the ICAO Rules**

6.96 The requirements of Article 84 are reflected as a procedural requirement in Article 2(g) of the Rules. In accordance with Article 2(g), an application and memorial must include “[a] statement that negotiations to settle the disagreement had taken place between the parties but were not successful”.

6.97 Article 2(g) of the ICAO Rules thus requires that an applicant affirm in its application and memorial that negotiations took place. A statement which makes it clear that no negotiations were attempted plainly cannot satisfy the procedural requirement in Article 2(g), as it does not constitute “[a] statement that negotiations to settle the disagreement had taken place . . .”. Rather, such a statement is an acknowledgement of precisely the contrary situation – that is, that negotiations to settle the disagreement have not taken place between the Parties and that the precondition of negotiations in Article 84 of the Chicago Convention is not fulfilled.

6.98 As noted at paragraph 6.44 above, the relevant paragraph of Qatar’s ICAO Memorial did not state that negotiations had taken place but had not been successful; instead, it made clear that no negotiations had taken place and that Qatar had not attempted to initiate any such negotiations on the flawed basis that to do so would have been “futile”.

6.99 As such, Qatar failed to comply with the requirements of Article 2(g) of the ICAO Rules. As a result, the ICAO Council erred in upholding its jurisdiction and in not declaring Qatar’s ICAO Application inadmissible on this basis.

## **CHAPTER VII CONCLUSIONS**

7.1 This appeal has been lodged by the Appellants with the International Court of Justice pursuant to Article 84 of the Chicago Convention.

7.2 The Appellants request the Court to rule upon the proper limits of the ICAO Council's jurisdiction under Article 84 of that Convention; whether, in the circumstances of the present case, any jurisdiction the ICAO Council might have should not be exercised; and whether the ICAO Council failed in its duty to observe fundamental, generally accepted principles of judicial procedure under Article 84. In particular, the Court is asked to determine that the ICAO Council overstepped fundamental principles of due process thus rendering its Decision null and void; and that in any event the ICAO Council erred in fact or in law in deciding "that the preliminary objection of the Respondents is not accepted" in respect of the ICAO Application.

7.3 This Memorial first sets out (in **Chapter II**) the background facts that form the dispute between the Parties and which led to the adoption of countermeasures by the Appellants, one aspect of which Qatar seeks to challenge before the ICAO Council. While these facts fall beyond the purview of the ICAO Council's jurisdiction under Article 84 of the Chicago Convention, they are necessary components of the real dispute between the Appellants and Qatar. They are therefore essential to understanding why that dispute is not capable of consideration by the ICAO Council (which constitutes the basis for the Appellants' First Preliminary Objection before the ICAO Council and its second ground of appeal before the Court).

7.4 Accordingly, Chapter II recounts briefly Qatar's support for and harbouring of terrorists and extremists, as well as its systematic interference in

the internal affairs of the Appellants and other States, in disregard of its obligations under general international law and other binding international obligations. These include the Riyadh Agreements, which complement the conventional and customary international law obligations incumbent upon Qatar. The Appellants put Qatar on notice of their grave concerns about its failures to comply on numerous occasions, including through the Implementing Mechanism and other processes established by the Riyadh Agreements. Qatar nonetheless persisted in its policies of intervention in the affairs of the Appellants and its support for terrorism and extremism in breach of its international obligations. As a consequence, in June 2017, the Appellants adopted a comprehensive suite of measures with a view to inducing Qatar to comply with its obligations. Without prejudice to the compliance of such measures with their obligations under the Chicago Convention, the Appellants submit – and have stated formally from the outset – that these measures constitute lawful countermeasures relating to matters in respect of which the ICAO Council is not competent to adjudicate.

7.5 The first ground of appeal, set out in **Chapter III**, is quite separate from the merits of the Preliminary Objections raised by the Appellants before the ICAO Council. It relates to the procedure followed by the ICAO Council in reaching its Decision of 29 June 2018, by which the ICAO Council dismissed the Appellants’ two Preliminary Objections. The ICAO Council manifestly failed to uphold the Appellants’ fundamental rights of due process, not least in failing to deliberate or provide a reasoned decision. The multiple failures in the proceedings were so grave and so widespread as to denude the proceedings and the Decision of a judicial character, rendering it a null and void.

7.6 **Chapter IV** sets out the distinction between jurisdiction and admissibility as it applied in the context of the particular legal provisions

pertaining to the ICAO Council, including pursuant to the ICAO Rules. It establishes that objections to both jurisdiction and admissibility fall to be determined by the ICAO Council as a preliminary issue, this being an issue debated specifically between the disputing Parties before the Council, but which the Council entirely failed to address in its Decision.

7.7 In **Chapter V**, the Appellants set out their second ground of appeal, namely, that the ICAO Council is not competent to rule upon the disagreement submitted to it by Qatar in the ICAO Application relating to the Chicago Convention, and that the ICAO Council accordingly erred in its Decision of 29 June 2018 in not accepting the Appellants' First Preliminary Objection and thereby affirming its jurisdiction to proceed to hear the merits of the dispute. This is because the real subject-matter of the dispute, objectively determined, does not concern matters within Article 84 of the Chicago Convention.

7.8 In fact, the real dispute between the Parties comprises Qatar's multiple actions and omissions in violation of international obligations extending well beyond the field of civil aviation, and the measures which the Appellants were compelled to take in 2017 to induce compliance with those obligations by Qatar, which also extend well beyond the field of civil aviation. Thus Qatar's complaint under the Chicago Convention is an attempt artificially to sever one part of the Parties' dispute and bring it before a forum which is not competent, nor equipped, to assess the entirety of the dispute. The effect of this artifice is either to hamper the Appellants from invoking in defence the broad countermeasures that they have adopted, or to prejudice that key defence in other fora. In a word, a peripheral aspect of the dispute is made to swallow up the overwhelming mass of the matter and, what is more, in a manner that prejudices the Appellants' rights. The Court is thus requested to uphold the First Preliminary Objection made by the Appellants before the ICAO Council.

7.9 Finally, the Appellants' third ground of appeal is detailed in **Chapter VI**. The Appellants submit that the ICAO Council is not competent to rule upon the disagreement submitted to it by Qatar in the ICAO Application since Qatar failed to demonstrate that it had complied with the precondition of negotiations contained in Article 84 of the Chicago Convention; and, in any case, Qatar's ICAO Application and Memorial failed to comply with Article 2(g) of the ICAO Rules. Qatar failed to put forward any evidence before the ICAO Council establishing that it attempted to negotiate with the Appellants even the artificially narrow disagreement that it has purported to submit to the ICAO Council and thus cannot satisfy this precondition. None of the materials that Qatar belatedly relied upon before the ICAO Council constitutes evidence of a genuine attempt to negotiate, since they do not refer to the Chicago Convention or even mention the restrictions on civil aviation. Instead, they merely confirm the Appellants' submission that the real issue in dispute concerns Qatar's internationally wrongful actions, which falls outside the ICAO Council's competence. Accordingly, the Court is requested to uphold the Second Preliminary Objection made by the Appellants before the ICAO Council.

7.10 In conclusion, the Court is respectfully requested to uphold the Appellants' appeal and hold that the Decision of the ICAO Council dated 29 June 2018 in respect of Qatar's ICAO Application is null and void and without effect on the basis of one or more of the following grounds:

#### A. FIRST GROUND OF APPEAL

- (a) The Decision of the ICAO Council on 29 June 2018 manifestly violated fundamental rules of due process and the applicable procedural rules in a manner so extreme as to render the proceedings devoid of any judicial character;

#### B. SECOND GROUND OF APPEAL

- (a) The ICAO Council is without jurisdiction to adjudicate upon the dispute between the Parties, which falls outside the ICAO Council's jurisdiction *ratione materiae* under Article 84 of the Chicago Convention; in the alternative,
- (b) Qatar's claims are inadmissible because it would be improper for the ICAO Council to exercise jurisdiction in circumstances in which this would be prejudicial to the rights of the Appellants and contrary to judicial propriety;

#### C. THIRD GROUND OF APPEAL

- (a) The ICAO Council is without jurisdiction to adjudicate upon the disagreement because Qatar has failed to satisfy a necessary precondition to the ICAO Council's jurisdiction by not attempting to initiate negotiations in relation to its claims prior to submitting them to the ICAO Council; in the alternative,
- (b) The ICAO Council is not competent to adjudicate upon Qatar's ICAO Application because Qatar failed to comply with the procedural requirement set out in Article 2(g) of the ICAO Rules of affirming that negotiations had taken place but were not successful.

## **SUBMISSIONS**

1. For the reasons set out in this Memorial, and reserving the right to supplement, amplify or amend the present submissions, the Kingdom of Bahrain, the Arab Republic of Egypt, the Kingdom of Saudi Arabia and the United Arab Emirates hereby request the Court to uphold their Appeal against the Decision rendered by the Council of the International Civil Aviation Organization dated 29 June 2018, in proceedings commenced by the State of Qatar by Qatar's Application (A) dated 30 October 2017 against the four States pursuant to Article 84 of the Chicago Convention.

2. In particular, the Court is respectfully requested to adjudge and declare, rejecting all submissions to the contrary, that:

- 1) the Decision of the ICAO Council dated 29 June 2018 reflects a manifest failure to act judicially on the part of the ICAO Council, and a manifest lack of due process in the procedure adopted by the ICAO Council; and
- 2) the ICAO Council is not competent to adjudicate upon the disagreement between the State of Qatar and the Appellants submitted by Qatar to the ICAO Council by Qatar's Application (A) dated 30 October 2017; and
- 3) the Decision of the ICAO Council dated 29 June 2018 in respect of Application (A) is null and void and without effect.



Respectfully submitted on behalf of the Kingdom of Bahrain, the Arab Republic of Egypt, the Kingdom of Saudi Arabia and the United Arab Emirates, respectively.

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H.E. Shaikh Fawaz bin Mohammed Al Khalifa  
Agent of the Kingdom of Bahrain  
Signed on 27 December 2018

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H.E. Amgad Abdel Ghaffar  
Agent of the Arab Republic of Egypt  
Signed on 27 December 2018

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H.E. Abdulaziz bin Abdullah bin Abdulaziz Abohaimed  
Agent of the Kingdom of Saudi Arabia  
Signed on 27 December 2018

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H.E. Saeed Ali Yousef Alnowais  
Agent of the United Arab Emirates  
Signed on 27 December 2018



## CERTIFICATION

The Agents of each Appellant in respect of that State hereby certify that all annexes are true copies of the documents referred to and that the translations provided are accurate.

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H.E. Shaikh Fawaz bin Mohammed Al Khalifa  
Agent of the Kingdom of Bahrain  
Signed on 27 December 2018

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H.E. Amgad Abdel Ghaffar  
Agent of the Arab Republic of Egypt  
Signed on 27 December 2018

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H.E. Abdulaziz bin Abdullah bin Abdulaziz Abohaimed  
Agent of the Kingdom of Saudi Arabia  
Signed on 27 December 2018

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H.E. Saeed Ali Yousef Alnowais  
Agent of the United Arab Emirates  
Signed on 27 December 2018



## LIST OF ANNEXES

### VOLUME II

INTERNATIONAL TREATIES AND RULES		
<b>Annex 1</b>	Convention on International Civil Aviation, signed at Chicago on 7 December 1944	1
<b>Annex 2</b>	International Air Services Transit Agreement, signed at Chicago on 7 December 1944	43
<b>Annex 3</b>	Pact of the League of Arab States, signed at Cairo on 22 March 1945	51
<b>Annex 4</b>	Agreement between the United Nations and the International Civil Aviation Organization, signed at New York on 1 October 1947	71
<b>Annex 5</b>	International Law Commission, Commentary on the Draft Convention on Arbitral Procedure adopted by the ILC at its Fifth Session (1955), Articles 14 and 30	87
<b>Annex 6</b>	ICAO, Rules for the Settlement of Differences, approved on 9 April 1957; amended on 10 November 1975	99
<b>Annex 7</b>	International Law Commission, Model Rules on Arbitral Procedure adopted by the ILC at its Tenth Session (1958)	115
<b>Annex 8</b>	Charter of the Co-operation Council for the Arab States of the Gulf, concluded at Abu Dhabi on 25 May 1981	123
<b>Annex 9</b>	United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982, Part XV – Settlement of Disputes	165
<b>Annex 10</b>	League of Arab States, Arab Convention on the Suppression of Terrorism, adopted at Cairo on 22 April 1998	179

<b>Annex 11</b>	Convention of the Organization of the Islamic Conference on Combating International Terrorism, adopted at Ouagadougou on 1 July 1999	203
<b>Annex 12</b>	International Convention for the Suppression of the Financing of Terrorism, signed at New York on 9 December 1999	221
<b>Annex 13</b>	International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts (2001), in Report of the International Law Commission on the Work of its Fifty-third Session (2001)	253
<b>Annex 14</b>	GCC Anti-Terrorism Agreement, signed at Kuwait City on 4 May 2004	369
<b>Annex 15</b>	UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006	403
<b>Annex 16</b>	Security Agreement Between the States of the Gulf Cooperation Council, signed at Riyadh on 13 November 2012	453
<b>Annex 17</b>	ICAO, Rules of Procedure for the Council, Ninth Edition 2013	475
<b>Annex 18</b>	UNCITRAL Arbitration Rules 2013, Article 17	515
<b>Annex 19</b>	First Riyadh Agreement, 23 and 24 November 2013	519
<b>Annex 20</b>	Mechanism Implementing the Riyadh Agreement, 17 April 2014	525
<b>Annex 21</b>	Supplementary Riyadh Agreement, 16 November 2014	537

## VOLUME III

### ICAO PLEADINGS

<b>Annex 22</b>	Request for the Intervention of the ICAO Council in the Matter of the Actions of the Arab Republic of Egypt, the Kingdom of Saudi Arabia, the United Arab Emirates and the Kingdom of Bahrain to close their Airspace to aircraft registered in the State of Qatar, attaching Application (1) of the State of Qatar, Complaint Arising under the International Air Services Transit Agreement done in Chicago on December 7, 1944, and Application (2) of the State of Qatar, Disagreement Arising under the Convention on International Civil Aviation done in Chicago on December 7, 1944, 8 June 2017	543
<b>Annex 23</b>	Application (A) and Memorial of the State of Qatar Relating to the Disagreement on the Interpretation and Application of the Convention on International Civil Aviation (Chicago, 1944), 30 October 2017	587
<b>Annex 24</b>	Preliminary Objections of the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Saudi Arabia and the United Arab Emirates in Re Application (A) of the State of Qatar Relating to the Disagreement Arising under the Convention on International Civil Aviation done at Chicago on 7 December 1944, 19 March 2018	611

## VOLUME IV

### ICAO PLEADINGS

<b>Annex 25</b>	Response of the State of Qatar to the Preliminary Objections of the Respondents; In re Application (A) of the State of Qatar Relating to the Disagreement on the interpretation and application of the Convention on International Civil Aviation (Chicago, 1944), 30 April 2018	897
<b>Annex 26</b>	Rejoinder to the State of Qatar's Response to the Respondents' Preliminary Objections of the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Saudi Arabia and the United Arab Emirates In Re Application (A) of the State of Qatar Relating to the Disagreement Arising under the Convention on International Civil Aviation done at Chicago on 7 December 1944, 12 June 2018	1383

## VOLUME V

ICAO CORRESPONDENCE AND DOCUMENTS		
<b>Annex 27</b>	ICAO Council – 74th Session, Minutes of the Fifth Meeting, ICAO document 8987-C/1004, 28 July 1971	1437
<b>Annex 28</b>	Decision of the Council on the Preliminary Objections in the Matter “United States and 15 European States”, 16 November 2000	1443
<b>Annex 29</b>	Preliminary Objection of the United States In Re the Application of the Federative Republic of Brazil Relating to the Disagreement arising under the Convention on International Civil Aviation done at Chicago on December 7, 1944, 24 March 2017	1447
<b>Annex 30</b>	Comments by the Federative Republic of Brazil In Re the Preliminary Objection of the United States of America relating to the Disagreement arising under the Convention on International Civil Aviation done at Chicago on December 7, 1944, 19 May 2017	1479
<b>Annex 31</b>	Request of the State of Qatar for Consideration by the ICAO Council under Article 54(n) of the Chicago Convention, 15 June 2017	1515
<b>Annex 32</b>	Decision of the Council on the Preliminary Objection of the United States in the Matter “Brazil v. United States”, 23 June 2017	1527
<b>Annex 33</b>	ICAO Presentation, “Council Informal Briefing – Qatar: Technical Issues”, 30 June 2017	1533
<b>Annex 34</b>	Item under Article 54(n) of the Convention on International Civil Aviation – Request of the State of Qatar, ICAO Council – 211th Session, Summary Minutes of the Tenth Meeting of 23 June 2017, ICAO document C-MIN 211/10, 11 July 2017	1543

<b>Annex 35</b>	ICAO, Working Paper presented by the Secretary General, Council – Extraordinary Session, concerning the Request of Qatar – Item under Article 54(n) of the Chicago Convention, ICAO document C-WP/14639, 14 July 2017	1561
<b>Annex 36</b>	Letter AN 13/4.3 of 17 July 2017 from the Secretary-General of ICAO to Representatives on the Council	1567
<b>Annex 37</b>	ICAO Working Paper presented by Bahrain, Egypt, Saudi Arabia and the United Arab Emirates, Council – Extraordinary Session, concerning the Request of Qatar – Item under Article 54(n) of the Chicago Convention, ICAO document C-WP/14640, 19 July 2017	1573
<b>Annex 38</b>	ICAO Working Paper presented by the State of Qatar, Council – Extraordinary Session, concerning the Request of Qatar – Item under Article 54(n) of the Chicago Convention, ICAO document C-WP/14641, 19 July 2017	1613
<b>Annex 39</b>	ICAO Council, Order of Business for the Extraordinary Council Meeting of 31 July 2017, concerning the Request of Qatar – Item under Article 54(n) of the Chicago Convention, 25 July 2017	1619
<b>Annex 40</b>	ICAO Council – Minutes of the Meeting of the Extraordinary Session, Summary of Decisions of 31 July 2017, concerning the Request of Qatar – Item under Article 54(n) of the Chicago Convention, 2 August 2017	1621
<b>Annex 41</b>	ICAO Council – Summary Minutes of the Meeting of the Extraordinary Session of 31 July 2017, concerning the Request of Qatar – Item under Article 54(n) of the Chicago Convention, 22 August 2017	1627
<b>Annex 42</b>	Letter of 3 November 2017 from the Secretary-General of ICAO to the Appellants	1657
<b>Annex 43</b>	Letter of 17 November 2017 from the Secretary-General of ICAO to the Appellants	1661

<b>Annex 44</b>	Letter of 16 January 2018 from the Permanent Representative of the Arab Republic of Egypt on the ICAO Council to the President of the ICAO Council	1663
<b>Annex 45</b>	Letter of 9 February 2018 from the Secretary-General of ICAO to the Appellants	1665
<b>Annex 46</b>	Letter of 17 May 2018 from the Permanent Representative of the Arab Republic of Egypt to the President of the ICAO Council	1669
<b>Annex 47</b>	Email of 24 May 2018 from the President of the ICAO Council to all Council Delegations	1673
<b>Annex 48</b>	Letter of 28 May 2018 from the Secretary-General of ICAO to the Appellants, attaching Email of 25 May 2018 from the Delegation of the State of Qatar to the Secretary-General of ICAO	1675
<b>Annex 49</b>	Letter of 28 May 2018 from the Secretary-General of ICAO to the Appellants	1681
<b>Annex 50</b>	Letter of 13 June 2018 from the President of the ICAO Council to the Appellants, attaching Working Paper in respect of Application (A), ICAO document C-WP/14778, 23 May 2018	1683
<b>Annex 51</b>	ICAO Presentation, “Informal briefing of the Council on the Settlement of Differences”, by Dr. Jiefang Huang, Director of ICAO Legal and External Relations Bureau, 19 June 2018	1691
<b>Annex 52</b>	Decision of the ICAO Council on the Preliminary Objection in the Matter: the State of Qatar and the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Saudi Arabia and the United Arab Emirates (2017) – Application (A), 29 June 2018	1699
<b>Annex 53</b>	ICAO Council – 214th Session, Summary Minutes of the Eighth Meeting of 26 June 2018, ICAO document C-MIN 214/8, 23 July 2018	1705

<b>Annex 54</b>	ICAO, Working Paper of the Secretariat submitted to the Legal Committee for consideration at its 37th Session, ICAO document LC/37-WP/3-2, 27 July 2018	1731
<b>Annex 55</b>	ICAO Council – 214th Session, Summary Minutes of the Eleventh Meeting of 29 June 2018, ICAO document C-MIN 214/11 (Draft), 10 September 2018	1735
<b>Annex 56</b>	Draft Aide Memoire of Appellants in response to Qatar Working Paper C-WP/14641 dated 19 July 2017, in respect of Request of Qatar – Item under Article 54(n) of the Chicago Convention, Undated	1759
OFFICIAL STATEMENTS AND CORRESPONDENCE BETWEEN STATES		
<b>Annex 57</b>	Official Statements on the founding of the GCC, in R. K. Ramazani, The Gulf Cooperation Council: Record and Analysis (1988)	1763
<b>Annex 58</b>	Note Verbale of 1 January 2014 from the Embassy of the Arab Republic of Egypt in Doha to the Ministry of Foreign Affairs of the State of Qatar	1783
<b>Annex 59</b>	Statement of the Arab Republic of Egypt Ministry of Foreign Affairs, “The Egyptian Ministry of Foreign Affairs summons the Qatari Ambassador to Cairo”, 4 January 2014	1787
<b>Annex 60</b>	Note Verbale of 3 February 2014 from the Embassy of the Arab Republic of Egypt in Doha to the Ministry of Foreign Affairs of the State of Qatar	1793
<b>Annex 61</b>	Note Verbale of 3 March 2014 from the Embassy of the Arab Republic of Egypt in Doha to the Ministry of Foreign Affairs of the State of Qatar	1797
<b>Annex 62</b>	Kingdom of Bahrain Ministry of Foreign Affairs News Details, “A Statement Issued by the Kingdom of Saudi Arabia, the United Arab Emirates and the Kingdom of Bahrain”, 5 March 2014	1801

<b>Annex 63</b>	Press Release issued by the Minister of Interior of the Kingdom of Saudi Arabia, “Injunctions on Security and Ideology for Citizens and Residents; and An Extra Grace Period of 15 Days for Those Taking Arms outside the Kingdom to Rethink Their Position and Return Home [to] Riyadh”, 7 March 2014	1805
<b>Annex 64</b>	Fourth Report of the Follow-up Committee on the Implementation of the Riyadh Agreement Mechanism, 15 July 2014	1807
<b>Annex 65</b>	Summary of Discussions in the Sixth Meeting of their Highnesses and Excellencies the Ministers of Foreign Affairs, Jeddah, 30 August 2014	1823
<b>Annex 66</b>	Jeddah Communique, 11 September 2014	1837
<b>Annex 67</b>	Press Release of the Arab League, “Consultative Meeting of the Council of the League at the level of Permanent Representatives on the condemnation of the barbaric terrorist act which killed twenty-one Egyptian citizens by ISIS in Libya”, 18 February 2015	1839
<b>Annex 68</b>	Note Verbale from the Embassy of the Arab Republic of Egypt in Doha to the Ministry of Foreign Affairs of the State of Qatar, Extradition Request concerning Yusuf Abdullah Aly Al-Qaradawi, 21 February 2015	1845
<b>Annex 69</b>	Letter of 10 March 2015 from the Arab League General-Secretariat, attaching letter of 10 March 2015 from the State of Qatar to the Arab League	1849
<b>Annex 70</b>	Note Verbale of 13 July 2015 from the Embassy of the Arab Republic of Egypt in Doha to the State of Qatar	1855
<b>Annex 71</b>	Official Statement of the Ministry of Interior of the Arab Republic of Egypt, 12 December 2016	1859
<b>Annex 72</b>	Letter of 19 February 2017 from the Minister of Foreign Affairs of the State of Qatar to the Secretary-General of the GCC	1867

<b>Annex 73</b>	Kingdom of Bahrain Ministry Foreign Affairs News Details, “Statement of the Kingdom of Bahrain on the severance of diplomatic relations with the State of Qatar”, 5 June 2017	1875
<b>Annex 74</b>	Kingdom of Bahrain Ministry Foreign Affairs News Details, “Statement by the Kingdom of Saudi Arabia, the Arab Republic of Egypt, the United Arab Emirates, and the Kingdom of Bahrain”, 9 June 2017	1877
<b>Annex 75</b>	“Report: General Details on the Individuals and the Bodies related to Al-Qaida on the List of Terrorist Organizations”, Emirates News Agency, 9 June 2017	1881
<b>Annex 76</b>	Saudi Arabia Fact Sheet, “Qatar’s History of Funding Terrorism and Extremism”, 27 June 2017	1945
<b>Annex 77</b>	Kingdom of Bahrain Ministry of Foreign Affairs News Details, “Minister of Foreign Affairs: Our next decisions regarding Qatar will be timely and thoroughly studied from all aspects”, 5 July 2017	1951
<b>Annex 78</b>	Statement of Reply of Mohamed El Shinawy, the Minister Plenipotentiary of the Permanent Mission of Egypt to the General Assembly, 22 September 2017	1953
<b>Annex 79</b>	United Nations, Statement by His Highness Sheikh Abdullah Bin Zayed Al Nahyan, Minister of Foreign Affairs and International Cooperation of the United Arab Emirates before the General Assembly, 72nd Session, 18th Plenary Meeting, document A/72/PV.18, 22 September 2017	1957
<b>Annex 80</b>	United Nations, Statement by H.E. Shaikh Khalid Bin Ahmed Bin Mohamed Al Khalifa, Minister of Foreign Affairs of the Kingdom of Bahrain, before the General Assembly, 72nd Session, 20th Plenary Meeting, document A/72/PV.20, 23 September 2017	1993

<b>Annex 81</b>	United Nations, Statement of H.E. Adel Ahmed Al-Jubeir, Minister of Foreign Affairs of the Kingdom of Saudi Arabia before the General Assembly, 72nd Session, 20th Plenary Meeting, document A/72/PV.20, 23 September 2017	2001
<b>Annex 82</b>	United Nations, Statement of H.E. Adel Ahmed Al-Jubeir, Minister of Foreign Affairs of the Kingdom of Saudi Arabia before the General Assembly, 73rd Session, 28 September 2018	2005
<b>Annex 83</b>	United Nations, Statement by H.E. Shaikh Khalid Bin Ahmed Bin Mohamed Al Khalifa, Minister of Foreign Affairs of the Kingdom of Bahrain, before the 73rd Session of the United Nations General Assembly, 29 September 2018	2023
<b>Annex 84</b>	United Arab Emirates Ministry of Foreign Affairs & International Cooperation, “UAE Calls for Comprehensive Approach to Address Different Dimensions of Regional Threats”, 30 September 2018	2031

## VOLUME VI

### UNITED NATIONS AND EUROPEAN UNION DOCUMENTS

<b>Annex 85</b>	United Nations, General Assembly Resolution 2131 (XX), Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, 21 December 1965	2035
<b>Annex 86</b>	United Nations, General Assembly Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970	2039
<b>Annex 87</b>	United Nations, Resolution 1267 (1999) adopted by the Security Council at its 4051st Meeting on 15 October 1999	2045
<b>Annex 88</b>	United Nations, Resolution 1373 (2001) adopted by the Security Council at its 4385th Meeting on 28 September 2001	2051
<b>Annex 89</b>	United Nations Press Release SC/7803, "Security Council Committee Adds Names of 17 Individuals to Al-Qaida Section of Consolidated List", 26 June 2003	2057
<b>Annex 90</b>	United Nations, Resolution 1624 (2005) adopted by the Security Council at its 5261st Meeting, 14 September 2005	2059
<b>Annex 91</b>	Council Implementing Regulation (EU) No 611/2011 of 23 June 2011 Implementing Regulation (EU) No 422/2011 Concerning Restrictive Measures in View of the Situation in Syria, 2011	2063
<b>Annex 92</b>	United Nations, Resolution 2133 (2014) adopted by the Security Council at its 7101st Meeting, 27 January 2014	2067

<b>Annex 93</b>	United Nations, Resolution 2178 (2014) adopted by the Security Council at its 7272nd Meeting, 24 September 2014	2071
<b>Annex 94</b>	United Nations, Resolution 2199 (2015) adopted by the Security Council at its 7379th Meeting, 12 February 2015	2081
<b>Annex 95</b>	Security Council Committee Pursuant to Resolutions 1267 (1999), 1989 (2011) and 2253 (2015) Concerning ISIL (Da'esh) Al-Qaida and Associated Individuals, Groups, Undertakings and Entities, Narrative Summaries of Reasons for Listing QDi.380 Abd al-Latif bin Abdallah Salih Muhammad al-Kawari, United Nations Security Council Subsidiary Organs (last updated 21 September 2015)	2089
<b>Annex 96</b>	Security Council Committee Pursuant to Resolutions 1267 (1999), 1989 (2011) and 2253 (2015) Concerning ISIL (Da'esh) Al-Qaida and Associated Individuals, Groups, Undertakings and Entities, Narrative Summaries of Reasons for Listing QDi.382 Sa'd bin Sa'd Muhammad Shariyan al-Ka'bi, United Nations Security Council Subsidiary Organs (last updated 21 September 2015)	2093
<b>Annex 97</b>	United Nations Security Council, 8007th Meeting, 20 July 2017	2097
<b>Annex 98</b>	United Nations, Resolution 2396 (2017) adopted by the Security Council at its 8148th Meeting, 21 December 2017	2105
<b>Annex 99</b>	United Nations Security Council, "The List established and maintained pursuant to Security Council res. 223 (2015)", generated on 23 November 2018	2119

PRESS ARTICLES AND TELEVISION CLIPS

<b>Annex 100</b>	“Threats and Responses: Counterterrorism; Qaeda Aide Slipped Away Long Before Sept. 11 Attack”, The New York Times, 8 March 2003	2129
<b>Annex 101</b>	Video Excerpts of Yusuf Al-Qaradawi, Al Jazeera Television, 28-30 January 2009	2135
<b>Annex 102</b>	Video Excerpt of Yusuf Al-Qaradawi, ‘Sharia and Life’, Al Jazeera Television, 17 March 2013	2139
<b>Annex 103</b>	“Muslim Brotherhood Opponents and Al-Jazeera Employees Protest: The Channel Is Biased and Unprofessional”, Middle East Media Research Institute, 12 July 2013	2143
<b>Annex 104</b>	“Qatar criticizes Egypt’s designation of the Muslim Brotherhood as a terrorist organization”, BBC Arabic, 4 January 2014	2149
<b>Annex 105</b>	“Update 2 – Egypt summons Qatari envoy after criticisms of crackdown”, Reuters, 4 January 2014	2155
<b>Annex 106</b>	E. Dickinson, “How Qatar Lost the Middle East”, Foreign Policy, 5 March 2014	2161
<b>Annex 107</b>	“UAE Cabinet Approves List of Designated Terrorist Organisations, Groups”, Emirates News Agency, 16 November 2014	2165
<b>Annex 108</b>	“Islamic State: Egyptian Christians held in Libya ‘killed’”, BBC, 15 February 2015	2169
<b>Annex 109</b>	T. Kamal, “Thousands Mourn Egyptian Victims of Islamic State in Disbelief”, Reuters, 16 February 2015	2173
<b>Annex 110</b>	J. Malsin and C. Stephen, “Egyptian Air Strikes in Libya Kill Dozens of Isis Militants”, The Guardian, 17 February 2015	2179

<b>Annex 111</b>	“Al-Nusra Leader Jolani Announces Split from al-Qaeda”, Al Jazeera, 29 July 2016	2183
<b>Annex 112</b>	R. al-Nu’aymi (@binomeir), Twitter, 14 December 2016, 05:08 a.m.	2187
<b>Annex 113</b>	A. Tamimi, “ Hamas’ Political Document: What to Expect”, Al Jazeera, 1 May 2017	2191
<b>Annex 114</b>	D. McElroy, “Qatar’s Top Terror Suspect Hosts Prime Minister at Wedding”, The National, 17 April 2018	2195
<b>Annex 115</b>	“Qatar Says ‘No Hypocrisy’, Admits to PM Attending Wedding of Terrorist’s Son”, Al Arabiya, 22 April 2018	2199
<b>Annex 116</b>	“Qatar Must Improve Relations with Neighbors, Desist from Backing up Extremism, Terrorism, Regional Destabilization, Saudi Ambassador to UK Says”, Saudi Press Agency, 25 April 2018	2203
<b>Annex 117</b>	J. Warrick, “Hacked Messages Show Qatar Appearing to Pay Hundreds of Millions to Free Hostages”, The Washington Post, 28 April 2018	2205
<b>Annex 118</b>	“Amir Hosts Iftar banquet for scholars, judges and imams”, Gulf Times, 30 May 2018	2213
<b>Annex 119</b>	D. McElroy, “US Advisers Quit Qatar Role as Emir Dines with Muslim Brotherhood Leader”, The National, 7 June 2018	2215
<b>Annex 120</b>	P. Wood, “‘Billion Dollar Ransom’: Did Qatar Pay Record Sum?”, BBC, 17 July 2018	2219
<b>Annex 121</b>	“Hacked Phone Messages Shed Light on Massive Payoff that Ended Iraqi Hostage Affair”, The Washington Post, Undated	2231

WRITINGS OF PUBLICISTS

<b>Annex 122</b>	R. I. R. Abeyratne, “Law Making and Decision Making Powers of the ICAO Council – A Critical Analysis”, (1992) 41 Zeitschrift für Luft- und Weltraumrecht 387	2239
<b>Annex 123</b>	J. Bae, “Review of the Dispute Settlement Mechanism Under the International Civil Aviation Organization: Contradiction of Political Body Adjudication”, (2013) 4(1) Journal of International Dispute Settlement 65	2249
<b>Annex 124</b>	D. Bowett, J. Crawford, I. Sinclair & A. Watts, “Efficiency of Procedures and Working Methods: Report of the Study Group established by the British Institute of International and Comparative Law as a contribution to the UN Decade of International Law”, (1996) 45 International and Comparative Law Quarterly 1	2267
<b>Annex 125</b>	T. Buergenthal, Law-making in the International Civil Aviation Organization, 1969, Part III	2301
<b>Annex 126</b>	G. F. Fitzgerald, “The Judgment of the International Court of Justice in the Appeal Relating to the Jurisdiction of the ICAO Council”, (1974) 12 Canadian Yearbook of International Law 153	2379
<b>Annex 127</b>	M. Milde, International Air Law and ICAO, 3rd ed., 2016,	2413
<b>Annex 128</b>	E. Warner, “Notes from PICAQ Experience”, (1946) 1 Air Affairs 30	2429

## VOLUME VII

### OTHER DOCUMENTS

<b>Annex 129</b>	United States Department of Treasury Press Release, “Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism”, 25 October 2007	2445
<b>Annex 130</b>	International Monetary Fund, Qatar: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism, 19 June 2018, published October 2008	2449
<b>Annex 131</b>	United States Department of Treasury Press Release, “Administration Takes Additional Steps to Hold the Government of Syria Accountable for Violent Repression Against the Syrian People”, 18 May 2011	2691
<b>Annex 132</b>	United States Department of Treasury Press Release, “Treasury Sanctions Five Individuals Tied to Iranian Plot to Assassinate the Saudi Arabian Ambassador to the United States”, 11 October 2011	2693
<b>Annex 133</b>	United States Department of Treasury Press Release, “Treasury Designates Al-Qa’ida Supporters in Qatar and Yemen”, 18 December 2013	2697
<b>Annex 134</b>	United Arab Emirates, Cabinet Decree of Terrorist Organisations of 15 November 2014 pursuant to Federal Law No. 7 of 2014 on Combating Terrorism Offences, adopted on 31 August 2014	2701
<b>Annex 135</b>	United States Department of Treasury Press Release, “Treasury Designates Twelve Foreign Terrorist Fighter Facilitators”, 24 September 2014	2707

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<b>Annex 136</b>	United States Department of Treasury Press Release, “Treasury Designates Financial Supporters of Al-Qaida and Al-Nusrah Front”, 5 August 2015	2713
<b>Annex 137</b>	Morsi and others v. Public Prosecution, Case No. 32611, Judgment of the Court of Cassation of the Arab Republic of Egypt (Criminal Chamber), 16 September 2017	2715

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## **Annex 2**

First Riyadh Agreement, 23 and 24 November 2013, United Nations Registration  
Number 55378 (English translation of Arabic original)

### **First Riyadh Agreement**

On Saturday, 19/1/1435 (Hijri Calendar, November 2013), the Custodian of the Two Holy Mosques King Abdullah Bin Abdel Aziz Al-Saud, the King of Saudi Arabia, and his brother His Highness Sheikh Sabbah Al-Ahmad Al-Jabber Al-Sabbah, the Prince of Kuwait, and his brother His Highness Sheikh Tamim bin Hamad bin Khalifa Al-Thani, the prince of Qatar, met in Riyadh.

They held extensive deliberations in which they conducted a full revision of what taints the relations between the [Gulf Cooperation] Council states, the challenges facing its security and stability, and means to abolish whatever muddies the relations.

Due to the importance of laying the foundation for a new phase of collective work between the Council's states, in order to guarantee it operating within a unified political framework based on the principles included in the main system of the Cooperation Council, the following has been agreed upon: (here there three signature)

1. No interference in the internal affairs of the Council's states, whether directly or indirectly. Not to give harbor or naturalize any citizen of the Council states that has an activity which opposes his country's regimes, except with the approval of his country; no support to deviant groups that oppose their states; and no support for antagonistic media.
2. No support to the Muslim Brotherhood or any of the organizations, groups or individuals that threaten the security and stability of the Council states through direct security work or through political influence.
3. Not to present any support to any faction in Yemen that could pose a threat to countries neighboring Yemen.

[Signatures]

In the name of God the Merciful the Compassionate

A review was conducted of the Agreement dated 1/19/1435AH, corresponding to 11/23/2013AD, and signed by the Custodian of the Two Holy Shrines, King Abdullah bin Abdul Aziz Al Saud of the Kingdom of Saudi Arabia, His Highness Sheikh Sabah Al-Ahmed Al-Jaber Al-Sabah, Emir of the State of Kuwait, and His Highness Sheikh Tamim bin Hamad bin Khalifa Al Thani, Emir of the State of Qatar, which includes the means for eliminating anything that affects the security and stability of the Council States.

We hereby support the conclusions reached in the agreement. Success is from Allah.,,

*Sheikh Mohamed bin Zayed*  
[signature]

*H.M. King Hamad bin Isa Al Khalifa*  
[signature] [signature]  
*1/20/1435AH*  
*11/24/2013AD*

First Riyadh Agreement

بسم الله الرحمن الرحيم

إنه في يوم السبت الموافق ١٩/١/١٤٣٥ هـ قد  
اجتمع فادم الحرم الشريف المشيخ محمد بن عبد العزيز  
آل سعود من المملكة العربية السعودية ، وأخيه  
صاحبه السمو الشيخ صباح الذهد الجابر الصباح أمير دولة  
الكويت وأخيه صاحبه السمو الشيخ ميم بن حمد خليفة  
آل ثاني أمير دولة قطر في الرياض .  
وقد تم عقد مباحثات متفصيلة من خلال  
اجراء مباحثات عامة لما يتواءم العلاقات  
بين دول الخليج والتدابير التي تواجه  
أمنك واستقرارها ، والسبل الكفيلة لانهال  
العالم صفاء العلاقات بيننا .  
واللهجة تأمير من مملكة جديدة في العمل  
الجماعي بين دول الخليج بما يخلق خيرها من  
إطار جبار موحدة تقوم على الأمن  
التي تم تضمنك في النظام الإسلامي للخليج  
السعوي فقد تم الاتفاق على  
التي

محمد بن عبد العزيز  
الشيخ محمد بن عبد العزيز  
الشيخ محمد بن عبد العزيز

الشيخ محمد بن عبد العزيز  
الشيخ محمد بن عبد العزيز

- ١- عدم التمكن من الشؤون الداخلية لأي من دول المجلس بكل مباشر أو غير مباشر وعدم الواد أو تجنيس أي من مواطني دول المجلس من نشاط يتعارض مع أنظمة دولته إلا في حال حصول موافقة دولته ، وعدم دعم الفئات الحارثة المعارضة له ولإعلام ، وعدم دعم الإعلام المعارض
- ٢- عدم دعم الشؤون الخارجية أو أي من المنظمات أو التنظيمات أو الأفراد الذين يهددون أمن واستقرار دول المجلس عند طرحه العمل الوطني المباشر أو عند طرحه محاولة التأثير السياسي .
- ٣- عدم قيام أي من دول مجلس التعاون بتقديم الدعم لأي فئة كانت في اليمن ممن تطول خطراً على الدول المجاورة لليمن ، والله الموفق .

صاحب السرد الشيخ محمد بن عبد الله بن زيد  
أمير دولة قطر

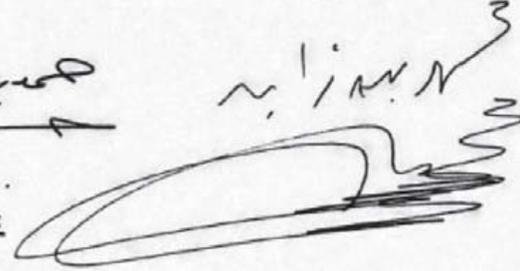
صاحب السرد الشيخ صباح الأحمد  
الجار الصباح  
أمير دولة الكويت

عبدالله

بسم الله الرحمن الرحيم

تم الاطلاع على الاتفاق المؤرخ في ١٩/١/١٤٣٥هـ الموافق  
٢٣/١١/٢٠١٣م والموقع من خادم الحرمين الشريفين الملك/ عبدالله  
بن عبدالعزيز آل سعود ملك المملكة العربية السعودية، وصاحب السمو  
الشيخ/ صباح الأحمد الجابر الصباح أمير دولة الكويت، وصاحب السمو  
الشيخ/ تميم بن حمد بن خليفة آل ثاني أمير دولة قطر، والمتضمن  
السبل الكفيلة بإزالة ما يؤثر على أمن واستقرار دول المجلس.  
ونؤيد ما تم التوصل إليه في الاتفاق. والله الموفق.،،،

  
عبدالله الثاني  
١٤٣٥ - ١ - ١٩  
٢٤ - ١١ - ٢٠١٣

  
صباح الأحمد الجابر الصباح  
١١ - ٢٣ - ٢٠١٣

### **Annex 3**

Mechanism Implementing the Riyadh Agreement, 17 April 2014, United Nations  
Registration Number 55378 (English translation of Arabic original)

## **Mechanism Implementing the Riyadh Agreement**

### **Top Secret**

Having the Foreign Ministers of the Cooperation Council Countries considered the Agreement signed in Riyadh on 19/1/1435 AH corresponding to 23/11/2013 AD by the Custodian of the Two Holy Mosques King Abdullah bin Abdul Aziz King of the Kingdom of Saudi Arabia, his brother his Highness Sheikh Sabah Al-Ahmed Al-Jabir Al-Sabah Emir of Kuwait and his brother his Highness Sheikh Tamim bin Hamad bin Khalifa Al-Thani Emir of Qatar. Having the Agreement been considered and signed by His Majesty King Hamad bin Isa Al-Khalifa King of Bahrain, His Majesty Sultan Qaboos bin Saeed the Sultan of Oman and His Highness Sheikh Mohammed bin Zayed bin Sultan Al-Nahyan the Crown Prince of Abu Dhabi and Deputy Supreme Commander of the UAE Armed Forces.

Given the importance of the signed Agreement that never before had any similar agreement been signed, out of the leaders' realization to the importance of its content, and for the urgency of the matter that calls for taking the necessary executive procedures to enforce its content. An agreement has been reached to set a mechanism that shall guarantee implementation of the same according to the following:

#### **Firstly: The concerned party to monitor the implementation of the Agreement:**

##### **Foreign Ministers of the GCC Countries:**

Foreign ministers of the GCC Countries shall hold private meeting on the margins of annual periodic meetings of the ministerial council wherein violations and complaints reported by any member country of the Council against any member country of the Council shall be reviewed by the foreign ministers to consider, and raise them to leaders. With the emphasis that the first task the Council shall conduct, according to the mentioned mechanism, is to make sure of the implementation of all content, mentioned above, within Riyadh Agreement, consider its content a basis to the security and stability of the GCC Countries and its unity, either with regard to those issues of internal affairs, external political aspects or internal security; and ensuring that no country neglects or omits the group orientation of the GCC, and shall coordinate with all members of the GCC; and emphasizing that no support is being made to any currents that pose threats to any member country of the Council.

#### **Secondly: Decision-making body:**

##### **Leaders of the GCC Countries:**

The leaders shall take the appropriate action towards what the Ministers of Foreign Affairs raise to them regarding any country that has not complied with the signed agreement by the GCC Countries.

#### **Thirdly: Compliance procedures:**

This Agreement shall be implemented by the following procedures:

**1. With Regard to GCC Countries Internal Affairs:**

- Commit that any media channels owned or supported by any GCC country should not discuss any disrespectful subjects to any GCC Country, directly or indirectly. The GCC Countries shall set a list by these media channels, and the list shall be periodically updated.
- All member countries shall commit that they will not grant citizens of other GCC Countries a citizenship who have been proven to practice opposition activity against their governments. Every country shall inform the other countries on the names of the opposition figures residing in such country in order to prevent their violative activities and take the appropriate actions against them.
- Take the necessary actions that would guarantee no interference in any GCC Country internal affairs, including, but not limited to:
  - a. Governmental organizations, community organizations, individuals and activists shall not support opposition figures with money or via media.
  - b. Not to shelter, accept, support, encourage or make its country an incubator to the activities of GCC citizens or other figures who are proven oppositionists to any country of GCC.
  - c. Ban the existence of any external organizations, groups or parties, who target GCC Countries and their peoples; nor provide foothold for their hostile activities against the GCC Countries.
  - d. Not to fund or support external organizations, groups or parties, that have hostile positions and incitements against the GCC Countries.

**2. With regard to the foreign policy:**

Commit to the group orientation of the GCC Countries, coordinate with other GCC countries and shall not support any entities or currents that pose threats to the GCC Countries, including:

- a. Not to support Muslim Brotherhood with money or via media in the GCC Countries or outside.
- b. Approve the exit of Muslim Brotherhood figures, who are not citizens, within a time limit to be agreed upon. The GCC Countries shall coordinate with each other on the lists of those figures.
- c. Not to support external gatherings or groups in Yemen, Syria or any destabilized area, which pose a threat to the security and stability of GCC Countries.

- d. Not to support or shelter whoever perform opposition activities against any GCC country, being current officials, former officials or others; and shall not give them any foothold inside their countries or allow them to act against any of the GCC Countries.
- e. Close any academies, establishments or centres that train and qualify individuals from GCC citizens to work against their governments.

**3. With regard to the internal security of the GCC Countries:**

In the event of any pending security files that need further clarification and are directly connected to the security matters of the competent security agencies in any GCC country, immediate meetings shall be held among security specialists with their counterparts to discuss the details of these subjects and find out their objectives.

**If any country of the GCC Countries failed to comply with this mechanism, the other GCC Countries shall have the right to take ant appropriate action to protect their security and stability.**

**Allah is the grantor of success,,,**

[signature]

His Highness Sheikh Abdullah bin Zayed Al Nahyan, Foreign Minister of United Arab Emirates

[signature]

His Royal Highness Prince Saud Al Faisal, Foreign Minister of Kingdom of Saudi Arabia

[signature]

His Excellency Dr. Khalid bin Mohammad Al Attiyah, Foreign Minister of State of Qatar

[signature]

His Excellency Sheikh Khalid bin Ahmed Al Khalifa, Foreign Minister of Kingdom of Bahrain

[signature]

His Excellency Yusuf bin Alawi bin Abdullah, Minister Responsible for Foreign Affairs of Sultanate of Oman

[signature]

His Excellency Sheikh Sabah Al-Khalid Al-Hamad Al-Sabah, Deputy Prime Minister and Minister of Foreign Affairs of State of Kuwait

## Mechanism Implementing the Riyadh Agreement



سري للغاية



### آلية تنفيذ اتفاق الرياض

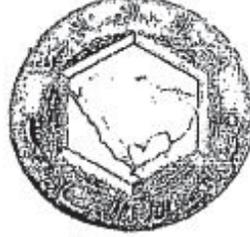


بعد اطلاق وزراء خارجية دول مجلس التعاون على الاتفاق الذي تم التوقيع عليه في الرياض بتاريخ ١٩/١/١٤٣٥هـ الموافق ٢٣/١١/٢٠١٣م من قبل خادم الحرمين الشريفين الملك عبدالله بن عبدالعزيز ملك المملكة العربية السعودية ، وأخيه صاحب السمو الشيخ صباح الأحمد الجابر الصباح أمير دولة الكويت ، وأخيه صاحب السمو الشيخ تميم بن حمد بن خليفة آل ثاني أمير دولة قطر . وأطلع ووقع عليه كل من صاحب الجلالة الملك حمد بن عيسى آل خليفة ملك مملكة البحرين ، وصاحب الجلالة السلطان قابوس بن سعيد سلطان عمان وسمو الشيخ محمد بن زايد بن سلطان آل نهيان ولي عهد أبوظبي نائب القائد الأعلى للقوات المسلحة بدولة الامارات العربية المتحدة .

ونظراً لأهمية هذا الاتفاق الذي تم التوقيع عليه والذي لم يسبق وأن

تم التوقيع على اتفاق مشابه له استشعاراً من القادة بأهمية مضمونه .

شهر



سري للغاية

ثانياً - الجهة المناط بها اتخاذ القرار :

قيادة دول مجلس التعاون :

يتخذ القادة ما يرونه مناسباً من إجراء حيال ما يتم رفعه لأنظارهم من وزراء الخارجية ضد الدولة التي لم تفي بما التزمت بما يتم الاتفاق عليه بين دول المجلس .

ثالثاً : الإجراءات المطلوب الالتزام بها :

يتم الالتزام بوضع هذا الاتفاق موضع التنفيذ وذلك من خلال الآتي :

١ - فيما يتعلق بالشؤون الداخلية لدول المجلس :

- الالتزام بعدم تناول شبكات القنوات الإعلامية المملوكة أو المدعومة بشكل مباشر أو غير مباشر من قبل أي دولة عضو لمواضيع تسيء إلى أي دولة من دول مجلس التعاون، ويتم الاتفاق بين دول المجلس على تحديد قائمة بهذه الوسائل الإعلامية ويتم تحديثها دورياً.

- تلتزم كل دولة عضو بعدم منح مواطني دولة من دول المجلس جنسيتها لمن يثبت قيامهم بنشاط معارض لحكومة بلادهم، على أن تقوم كل دولة



سري للغاية

ولما كان الأمر يستدعي اتخاذ الإجراءات التنفيذية اللازمة لإنفاذ  
مقتضاه، فقد تم الاتفاق على ضرورة وضع آلية تضمن ذلك وفقاً للتالي :-

أولاً - الجهة المناط بها مراقبة تنفيذ الاتفاق :

وزراء خارجية دول مجلس التعاون :

يعقد وزراء الخارجية على هامش الاجتماعات الدورية السنوية  
للمجلس الوزاري اجتماعاً خاصاً يتم خلاله استعراض التجاوزات  
والشكاوي التي تردهم من أي من الدول الأعضاء ضد دولة أخرى عضو  
في مجلس التعاون . للنظر فيها ومن ثم رفعها للقادة . مع التأكيد على أن  
أول مهمة يقوم بها المجلس وفق الآلية المشار إليها هو التأكيد من تنفيذ  
جميع ما تضمنه اتفاق الرياض المشار إليه أعلاه واعتبار محتواه أساساً  
لأمن واستقرار دول مجلس التعاون وتماسك دوله ، سواء المتعلقة  
بالشئون الداخلية ، أو الجوانب السياسية الخارجية أو الأمن الداخلي وعدم  
تجاوز التوجه الجماعي لدول المجلس والتنسيق مع الدول الأعضاء فيه ،  
وعدم دعم أي تيارات تمثل خطورة على دوله .

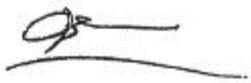


سري للغاية

بإبلاغ أسماء مواطنيها الذين يقومون بنشاط معارض لحكومتهم إلى الدولة الأخرى التي يتواجدون بها وذلك لمنع أنشطتهم المخالفة واتخاذ الإجراءات المناسبة بحقهم.

- اتخاذ الإجراءات اللازمة التي تضمن عدم التدخل في الشؤون الداخلية لأي دولة من دول المجلس وفي أي موضوع يمس الشأن الداخلي لتلك الدول، وعلى سبيل المثال لا الحصر ما يلي :

- أ- عدم دعم الفئات المعارضة مادياً وإعلامياً من قبل مؤسسات رسمية أو مجتمعية أو أفراد ونشطاء.
- ب- عدم إيواء أو استقبال أو تشجيع أو دعم أو جعل الدولة منطلقاً لأنشطة مواطني دول المجلس أو غيرهم الذين يثبت معارضتهم لأي من دول المجلس.
- ج- منع المنظمات والتنظيمات والأحزاب الخارجية التي تستهدف دول مجلس التعاون وشعوبها من إيجاد موطئ قدم لها في الدولة وجعلها منطلقاً لأنشطتها المعادية لدول المجلس.

  
من





سرى للغاية

د- عدم تقديم التمويل المادي والدعم المعنوي للمنظمات والتنظيمات والأحزاب والمؤسسات الخارجية والتي تصدر عنها مواقف معادية ومعرضة ضد دول مجلس التعاون.

٢ - فيما يتعلق بالمبادرة الخارجية :

الالتزام بالتوجه الجماعي لدول مجلس التعاون والتنسيق مع دول المجلس وعدم دعم جهات وتيارات تمثل خطورة على دول المجلس ومن ذلك :-

أ- عدم دعم الاخوان المسلمين مادياً وإعلامياً سواءً في دول مجلس التعاون أو خارجه.

ب- الموافقة على خروج مجموعة الأخوان المسلمين من غير المواطنين وخلال مدة متفق عليها على أن يتم التنسيق مع دول مجلس التعاون حول قوائم هؤلاء الأشخاص.

ج- عدم دعم المجموعات والجماعات الخارجية التي تمثل تهديداً لأمن واستقرار دول مجلس التعاون سواءً في اليمن أو سوريا أو غيرها من

مواقع الفتن.

حزب

7



سري للغاية

د- عدم دعم أو إيواء من يقومون بأعمال مناهضة لأي من دول مجلس التعاون سواء كانوا من المسؤولين الحاليين أو السابقين أو من غيرهم، وعدم تمكين هؤلاء الأشخاص من إيجاد موطن قديم داخل الدولة أو المساس بأي دولة أخرى من دول المجلس.

هـ- إغلاق أي أكاديميات أو مؤسسات أو مراكز تسعى إلى تدريب وتأهيل الأفراد من دول مجلس التعاون للعمل ضد حكوماتهم.

٣ - فيما يتعلق بالأمن الداخلي لدول المجلس :

إن وجود ملفات أمنية معلقة تحتاج إلى إيضاح وذات ارتباط مباشر بالشأن الأمني لدى الأجهزة الأمنية المختصة في أي دولة من دول المجلس، يتطلب الدخول في تفاصيل تلك المواضيع وسبر أغوارها من خلال اجتماعات مباشرة فورية بين المختصين الأمنيين بشكل ثنائي مع نظرائهم.



سري للغاية

وفي حال عدم الالتزام بهذه الآلية فلبقية دول المجلس اتخاذ ما تراه  
مناسباً لحماية أمنها واستقرارها.  
والله الموفق.،،،

معالي الشيخ / خالد بن احمد بن محمد آل خليفة  
وزير الخارجية في مملكة البحرين

معالي الشيخ / عبدالله بن زايد آل نهيان  
وزير الخارجية بالإمارات العربية المتحدة

معالي / يوسف بن عوي بن عبدالله  
الوزير المعنول عن الشؤون الخارجية في  
سلطنة عمان

صاحب السمو الملكي الأمير / سعود الفيصل  
وزير الخارجية في المملكة العربية السعودية

معالي الشيخ صباح الخالد الحمد الصباح  
نائب رئيس مجلس الوزراء ووزير الخارجية  
بدولة الكويت

معالي الدكتور / خالد بن محمد المطية  
وزير الخارجية في دولة قطر

#### **Annex 4**

Supplementary Riyadh Agreement, 16 November 2014, United Nations Registration Number  
55378 (English translation of Arabic original)

## **The Supplementary Riyadh Agreement**

### **Top Secret**

In the Name of Allah, the Most Beneficent, the Most Merciful

1. Based on a generous invitation by the Custodian of the Two Holy Mosques King Abdullah Bin Abdel-Aziz Al-Saud, the king of Saudi Arabia, the following have met in Riyadh today, Sunday, 23/1/1436 (Hijri Calendar), 16/11/2014 (Gregorian Calendar): His Highness Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabbah, the Prince of Kuwait, His Majesty King Hamad Bin Eissa Al-Khalifa, King of Bahrain; His Highness Sheikh Tamim Bin Hamd Bin Khalifa Al-Thani , Prince of Qatar; His Highness Sheikh Mohamed Bin Rashed Al-Maktom, the Vice President and Prime Minister of the United Arab Emirates and the Governor of Dubai; and His Highness Sheikh Mohamed Bin Zayed Al-Nahyan, the Crown Prince of Abu Dhabi, and the deputy Commander of the Armed Forces of the United Arab Emirates. This was to cement the spirit of sincere cooperation and to emphasize the joint fate and the aspirations of the Citizens of the Gulf Cooperation Council for a strong bond and solid rapprochement.
2. After discussing the commitments stemming from the Riyadh Agreement signed 19/1/1435 (Hijri) – 23/11/2013 and its executive mechanism ; reviewing the reports of the committee following the execution mechanism and the results of the joint follow-up [operation] room; and reviewing the conclusions of the report of the follow-up room signed on 10/1/1436 (Hijri) – 3/11/2014 (Gregorian) by the intelligence chiefs of the Kingdom of Saudi Arabia, the United Arab Emirates, the Kingdom of Bahrain and the state of Qatar.
3. The following has been reached:
  - a) Stressing that non-committing to any of the articles of the Riyadh Agreement and its executive mechanism amounts to a violation of the entirety of them.
  - b) What the intelligence chiefs have reached in the aforementioned report is considered a step forward to implement Riyadh agreement and its executive mechanism, with the necessity of the full commitment to implementing everything stated in them within the period of one month from the date of the agreement.
  - c) Not to give refuge, employ, or support whether directly or indirectly, whether domestically or abroad, to any person or a media apparatus that harbors inclinations harmful to any Gulf Cooperation Council state. Every state is committed to taking all the regulatory, legal and judicial measures against anyone who [commits] any encroachment against Gulf Cooperation Council states, including putting him on trial and announcing it in the media.
  - d) All countries are committed to the Gulf Cooperation Council discourse to support the Arab Republic of Egypt, and contributing to its security, stability and its financial support; and ceasing all media activity directed against the Arab Republic of Egypt in all media platforms, whether directly or indirectly, including all the offenses broadcasted on Al-jazeera, Al-Jazeera Mubashir Masr, and to work to stop all offenses in Egyptian media.

4. Accordingly, it has been decided that the Riyadh Agreement, and its executive mechanism, and the components of this supplementary agreement, requires the full commitment to its implementation. The leaders have tasked the intelligence chiefs to follow up on the implementation of the results of this supplementary agreement and to report regularly to the leaders, in order to take the measures they deem necessary to protect the security and stability of their countries.
5. It has been agreed that implementing the aforementioned commitments contributes towards the unity of the Council states and their interests and the future of their peoples, and signals a new page that will be a strong base to advance the path of joint work and moving towards a strong Gulf entity.

[Signatures]

Note that the UAE has 2 signatures on this page one for His Highness Sheikh Mohamed Bin Rashed Al-Maktom, the Vice president and Prime Minister of the UAE and the Ruler of Dubai; and another one by His Highness Mohamed Bin Zayed Al-Nahyan, the Crown Prince of Abu Dhabi, and the deputy Commander of the Armed Forces of the UAE.

بسم الله الرحمن الرحيم

"سري للغاية"

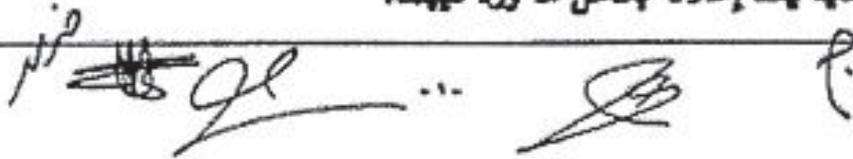
### "اتفاق الرياض التكميلي"

بناءً على دعوة كريمة من خادم الحرمين الشريفين الملك عبدالله بن عبدالعزيز آل سعود ملك المملكة العربية السعودية فقد اجتمع هذا اليوم الأحد ١٤٣٦/١/٢٣ هـ الموافق ٢٠١٤/١١/١٦ م في مدينة الرياض لدى خادم الحرمين الشريفين - حفظه الله - صاحب السمو الشيخ صباح الأحمد الجابر الصباح أمير دولة الكويت، وصاحب الجلالة الملك حمد بن عيسى آل خليفة ملك مملكة البحرين، وصاحب السمو الشيخ تميم بن حمد بن خليفة آل ثاني أمير دولة قطر، وصاحب السمو الشيخ محمد بن راشد آل مكتوم نائب رئيس دولة الإمارات العربية المتحدة ورئيس مجلس الوزراء حاكم دبي، وصاحب السمو الشيخ محمد بن زايد آل نهيان ولي عهد أبوظبي نائب القائد الأعلى للقوات المسلحة بدولة الإمارات العربية المتحدة، وذلك لترسيخ روح التعاون الصادق والتأكيد على المصير المشترك وما يتطلع إليه أبناء دول مجلس التعاون لتكامل الخليج العربية من وحدة متينة وتقارب وثيق.

وبعد مناقشة الالتزامات المنبثقة عن اتفاق الرياض الموقع بتاريخ ١٤٣٥/١/١٩ هـ الموافق ٢٠١٣/١١/٢٣ م، وآلية التنفيذ، والأطراف على تقارير لجنة متابعة تنفيذ الآلية ونتائج غرفة المتابعة المشتركة، واستعراض ما خرج به محضر نتائج غرفة المتابعة الموقع بتاريخ ١٤٣٦/١/١٠ هـ الموافق ٢٠١٤/١١/٣ م من قبل رؤساء الأجهزة الاستخباراتية في كل من (المملكة العربية السعودية، ودولة الإمارات العربية المتحدة، ومملكة البحرين، ودولة قطر).

لقد تم التوصل إلى الآتي:

أولاً: التأكيد على أن عدم الالتزام بأي بند من بنود اتفاق الرياض وآلية التنفيذ يعد إخلالاً بكامل ما ورد فيهما.



ثانياً؛ أن ما توصل إليه رؤساء الأجهزة الاستخباراتية في محضرهم المشار إليه أعلاه يعدّ تقدماً لإنفاذ اتفاق الرياض وآلياته التنفيذية، مع ضرورة الالتزام الكامل بتنفيذ جميع ما ورد فيهما في مدة لا تتجاوز شهر من تاريخ هذا الاتفاق.

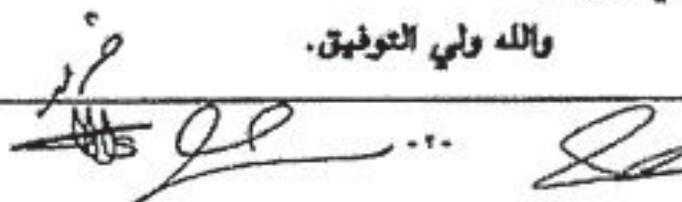
ثالثاً؛ عدم إهواء أو توظيف أو دعم - بشكل مباشر أو غير مباشر - في الداخل أو الخارج أي شخص أو أي وسيلة إعلامية معن له توجهات تسيء إلى أي دولة من دول مجلس التعاون، وتلتزم كل دولة باتخاذ كافة الإجراءات النظامية والقانونية والتضائية بحق من يصدر عن هؤلاء أي تجاوز ضد أي دولة أخرى من دول مجلس التعاون لدول الخليج العربية، بما في ذلك محاكمته، وأن يتم الإعلان عن ذلك في وسائل الإعلام.

رابعاً؛ التزام كافة الدول بنهج سياسة مجلس التعاون لدول الخليج العربية لدعم جمهورية مصر العربية والإسهام في أمنها واستقرارها والمساهمة في دعمها اقتصادياً، وإيقاف كافة النشاطات الإعلامية الموجهة ضد جمهورية مصر العربية في جميع وسائل الإعلام بصفة مباشرة أو غير مباشرة بما في ذلك ما يبث من إساءات على قنوات الجزيرة وقناة مصر مباشر، والسعي لإيقاف ما ينشر من إساءات في الإعلام المصري.

وبناء على ما سبق، فقد تقرر أن مقتضى اتفاق الرياض، وآلياته التنفيذية، وما ورد في هذا الاتفاق التكميلي، يتطلب الالتزام الكامل بتنفيذها. وقد كلف القادة رؤساء الأجهزة الاستخباراتية بمتابعة إنفاذ ما تم التوصل إليه في هذا الاتفاق التكميلي، وأن يتم الرفع عن ذلك بشكل دوري للقادة لاتخاذ ما يرونه من التدابير والإجراءات المناسبة لحماية أمن دولهم واستقرارها.

كما تم الاتفاق على أن تنفيذ ما ذكر أعلاه من التزامات يعصب في وحدة دول المجلس ومصالحها ومستقبل شعوبها، ويعدّ إيذاناً بفتح صفحة جديدة ستكون بإذن الله مرتكزاً قوياً لنفع مسيرة العمل المشترك والانطلاق بها نحو كيان خليجي قوي و متماسك.

والله ولي التوفيق.



صاحب السمو الشيخ محمد بن زايد آل نهيان صاحب السمو الشيخ محمد بن راشد آل مكتوم



نائب رئيس دولة الإمارات العربية المتحدة  
ورئيس مجلس الوزراء حاكم دبي

ولي عهد أبوظبي نائب القائد الأعلى للقوات المسلحة  
بمملكة الإمارات العربية المتحدة

صاحب الجلالة الملك حمد بن عيسى آل خليفة



ملك مملكة البحرين

صاحب السمو الشيخ تميم بن حمد بن خليفة آل ثاني



أمير دولة قطر

صاحب السمو الشيخ صباح الاحمد الجابر الصباح



أمير دولة الكويت



خادم الحرمين الشريفين  
الملك عبدالله بن عبدالعزيز آل سعود

ملك المملكة العربية السعودية

## **Annex 5**

Letter from HE Mohammed Bin Abdulrahman Al-Thani (Minister of Foreign Affairs of Qatar) to HE Dr Abdullatif Bin Rashid Al Zayani (Secretary-General of the GCC),  
19 February 2017 (English translation (of pages 2–3) of Arabic original)

Number: 2017-88-00132-5

Date: 19 February 2017

**Confidential**

**HE.Dr.Abdullatif Bin Rashid AlZayani**  
**GCC Secretary General**  
**General Secretariat**  
**Riyadh**

I would like to express to your Excellency my sincere greetings and best wishes for your health.

I would like to refer to the State of Qatar's sincere commitment which is "unchangeable and unshakeable" towards all that has been agreed upon within the framework of the GCC. In this context, I refer to the Riyadh Agreement signed by the GCC leaders on 23 November 2013 that aimed to strengthen the unity of the GCC State members and its interests and the future of their people, and it was held in international and regional circumstances that required the conclusion of this agreement to serve the higher interests of the GCC States.

As the GCC countries have made no effort to implement the Riyadh Agreement and the mechanism of its implementation. Therefore, the subject of this agreement has been exhausted. In accordance with the established rules on international agreements, this agreement must be terminated since the purpose of it has been completed.

Since the GCC Charter and other mechanisms constitutes the basis for relations between the GCC states, the reliance on the Riyadh Agreement and the abandonment of the Charter and its other mechanisms do not serve the interests and objectives of the GCC.

Therefore, the GCC countries are called upon to agree to terminate the Riyadh agreement which has been overtaken by events at the international and regional levels, and in turn, it may be necessary for the member states of the Council to take the necessary steps to

amend the Charter in line with their aspirations, to be prepared to face any issues that may arise regarding joint gulf cooperation, and regional and international developments in various fields

In conclusion, we would kindly ask your Excellency to circulate this letter to our brothers in the GCC countries and consider it as an official document.

**Mohammed Bin Abdulrahman Al-Thani**  
**Minister of foreign Affairs in the state of**  
**Qatar**

مجلس التعاون دول الخليج العربية - الامانة العامة



مكتب الأمين العام

سري

حفظه الله

معالي الشيخ / خالد بن أحمد بن محمد آل خليفة  
وزير الخارجية، رئيس الدورة الحالية للمجلس الوزاري  
المنامة - مملكة البحرين

السلام عليكم ورحمة الله وبركاته،،،

يطيب لي أن أبعث لمعاليكم الكريم بخالص تحياتي الأخوية مقرونة بتمنياتي  
لكم بموفقور الصحة والعافية.

ويسرني أن أرفق لمعاليكم الرسالة التي تلقيتها من أخيك معالي الشيخ/ محمد  
بن عبدالرحمن بن جاسم آل ثاني، وزير الخارجية بدولة قطر برقم ١٣٢-٥ وتاريخ  
٢٠١٧/٢/١٩م، الشارحة لذاتها.

نتفضل معاليكم الكريم بالاطلاع.

وتفضلوا معاليكم بقبول وافر التقدير والاحترام،،،

المخلص لسان الله

د. عبداللطيف بن راشد الزياني

الأمين العام



التاريخ: ٢٢/٠٥/١٤٣٨هـ

الموافق: ١٩/٠٢/٢٠١٧م

سري

المحترم  
معالي الأخ الدكتور / عبداللطيف بن راشد الزياني  
الأمين العام لمجلس التعاون الخليجي  
الأمانة العامة  
الرياض

السلام عليكم ورحمة الله وبركاته،،

يطيب لي أن أبعث لمعاليتكم بخالص التحية والتقدير متمنياً لكم التوفيق ودوام الصحة والعافية.

يسرني أن أشير إلى التزام دولة قطر الثابت الذي لا يتبدل ولا يتزعزع بجميع ما يتم الاتفاق عليه في إطار مجلس التعاون الخليجي، وفي هذا السياق أشير إلى اتفاق الرياض الموقع من قبل أصحاب السمو قادة دول مجلس التعاون لدول الخليج العربية بتاريخ ١٩/٠١/١٤٣٥هـ الموافق ٢٣/١١/٢٠١٣م، بهدف تعزيز وحدة دول المجلس ومصالحها ومستقبل شعوبها، والذي عقد في ظروف دولية وإقليمية تتطلب إبرام هذا الاتفاق خدمةً للمصالح العليا لدول المجلس. وحيث أن دول المجلس لم تألوا جهداً في تنفيذ اتفاق الرياض وآلية تنفيذه ومن ثم فقد تم استنفاذ موضوع هذا الاتفاق، الأمر الذي يتعين معه وفقاً للقواعد المستقرة بشأن الاتفاقيات الدولية إنهاء هذا الاتفاق لانتهاه الغرض الذي من أجله تم إبرامه.

ولما كان النظام الأساسي لمجلس التعاون والآليات الأخرى يشكل الأساس الحاكم للعلاقات بين دول المجلس، فإن الاستناد إلى اتفاق الرياض وترك النظام الأساسي وآلياته الأخرى لا يحقق مصالح وأهداف مجلس التعاون الخليجي.

عليه، فإن دول المجلس مدعوة للاتفاق على إنهاء العمل باتفاق الرياض، الذي تجاوزته الأحداث على الصعيدين الدولي والإقليمي واستنفاذ موضوعه، وبالمقابل قد يكون من الضروري أن تعمل الدول الأعضاء في المجلس على اتخاذ اللازم نحو تعديل النظام الأساسي للمجلس على



نحو يتماشى مع طموحاتها، لمواجهة مستجدات العمل الخليجي المشترك، والتطورات الإقليمية والدولية الراهنة في شتى المجالات.  
وختاماً، نتطلع من معاليكم تميم ما تضمنته هذه الرسالة على الأثقاء في دول مجلس التعاون لدول الخليج العربية، واعتبارها وثيقة رسمية من وثائق الأمانة العامة للمجلس.  
**وتفضلوا معاليكم بقبول خالص تحياتي وتقديري،،،**

محمد بن عهد الرحمن آل ثاني

وزير الخارجية

## **Annex 6**

“Egypt cut ties with Qatar for ‘supporting terrorist organizations’”, *State Information Service*,  
8 June 2017

## Egypt cut ties with Qatar for 'supporting terrorist organizations'

Thursday, 08 June 2017 02:19 PM



Egypt announced on 5th June 2017 that it was severing diplomatic relations with Qatar due to its ongoing support for terrorist ideologies and meddling in the internal affairs of Egypt.

The move was taken "in light of the continued insistence of the Qatari government on taking a stance against Egypt," the Foreign Affairs Ministry said in a statement on Monday.

The ministry said that the move followed "the failure of all efforts to persuade Qatar against supporting terrorist organizations, chiefly the terrorist Muslim Brotherhood organization, and harboring its leaders who have been convicted of terrorist attacks that targeted the safety and security of Egypt."

The Egyptian government also accused Qatar of interfering in the domestic affairs of Egypt and other countries in the region in a manner that "jeopardizes Arab national security."

The ministry said that Egypt would close its airspace and seaports to all Qatari transportation with a view to protecting its national security.

The Foreign Ministry issued on June 5, 2017 a statement to explain reasons for breaking off diplomatic relations with the state of Qatar.

### [Foreign Ministry statement](#)

### [Egypt, Saudi, UAE, Bahrain make list of terrorist financiers supported by Qatar](#)

### [Egypt, Gulf States set preconditions to end severing relations with Qatar](#)

### [Egyptian, Saudi, UAE, Bahraini FMs Issue Joint Statement on Qatar's Crisis](#)

### [International Responses](#)

## **Foreign Ministry statement**

The Ministry of Foreign Affairs announced breaking off diplomatic relations with the state of Qatar because of the Qatari rule insistence on adopting a hostile attitude towards Egypt, the failure of all attempts to dissuade it from supporting terrorist organizations topped by terrorist Moslem Brotherhood, providing a safe haven for its leaders who were indicted by the judiciary in terrorist operations targeting Egypt's security and stability, besides promoting the thought of Al Qaeda and Daesh, its interference in the domestic affairs of Egypt and the states of the region in a manner that threatens Arab national security and sowing the seeds of dissension in Arab communities according to a well studied scheme which targets the unity and interests of the Arab nation.

The statement said Egypt has closed its airports and naval ports in front of all Qatari means of transportation, out of its keenness to maintain Egyptian national security.

## **Egypt, Saudi, UAE, Bahrain make list of terrorist financiers supported by Qatar**

Egypt, Saudi Arabia, the United Arab Emirates and Bahrain on Thursday said they designated 59 individuals and 12 institutions that financed terrorist organizations and previously received support from Qatar.

The four countries released the names saying this comes in light of their commitment to fighting terrorism, drying up their sources of funding, combating extremist ideology and its dissemination and working together to eradicate it and immunize communities, according to a statement carried by Al Arabiya News.

The four countries said they made the list as a result of the violations that Qatar keep making by supporting terror groups.

“As a result of the continued violation by the authorities in Doha of the obligations and agreements signed by them, including the pledge not to support or harbor elements or organizations that threaten the security of states and to ignore the repeated contacts that they called upon to fulfill what they had signed in the Riyadh Agreement of 2013, its implementing mechanism and the supplementary agreement in 2014; The four States have agreed to classify 59 individuals and 12 entities on their prohibited lists of terrorists, which will be updated in succession and announced,” the statement said.

### **List of designated individuals:**

1. Khalifa Mohammed Turki al-Subaie - Qatari
2. Abdelmalek Mohammed Yousef Abdel Salam - Jordanian
3. Ashraf Mohammed Yusuf Othman Abdel Salam - Jordanian
4. Ibrahim Eissa Al-Hajji Mohammed Al-Baker - Qatari
5. Abdulaziz bin Khalifa al-Attiyah - Qatari

6. Salem Hassan Khalifa Rashid al-Kuwari - Qatari
7. Abdullah Ghanem Muslim al-Khawar - Qatari
8. Saad bin Saad Mohammed al-Kaabi - Qatari
9. Abdullatif bin Abdullah al-Kuwari - Qatari
10. Mohammed Saeed Bin Helwan al-Sakhtari - Qatari
11. Abdul Rahman bin Omair al-Nuaimi - Qatari
12. Abdul Wahab Mohammed Abdul Rahman al-Hmeikani - Yemeni
13. Khalifa bin Mohammed al-Rabban - Qatari
14. Abdullah Bin Khalid al-Thani - Qatari
15. Abdul Rahim Ahmad al-Haram - Qatari
16. Hajjaj bin Fahad Hajjaj Mohammed al-Ajmi - Kuwaiti
17. Mubarak Mohammed al-Ajji - Qatari
18. Jaber bin Nasser al-Marri - Qatari
19. Yousef Abdullah al-Qaradawi - Egyptian
20. Mohammed Jassim al-Sulaiti - Qatari
21. Ali bin Abdullah al-Suwaidi - Qatari
22. Hashem Saleh Abdullah al-Awadhi - Qatari
23. Ali Mohammed Mohammed al-Salabi - Libyan
24. Abdelhakim Belhadj - Libyay
25. Mahdi Harati - Libyan
26. Ismail Muhammad Mohammed al-Salabi - Libyan
27. Al-Sadiq Abdulrahman Ali al-Ghuraini - Libyan
28. Hamad Abdullah Al-Futtais al-Marri - Qatar
29. Mohamed Ahmed Shawky Islambouli - Egyptian
30. Tariq Abdelmagoud Ibrahim al-Zomor - Egyptian
31. Mohamed Abdelmaksoud Mohamed Afifi - Egyptian
32. Mohamed el-Saghir Abdel Rahim Mohamed - Egyptian

33. Wajdi Abdelhamid Mohamed Ghoneim - Egyptian
34. Hassan Ahmed Hassan Mohammed Al Dokki Al Houti - UAE
35. Governor of Abyssin al-Humaidi al-Mutairi - Saudi / Kuwaiti
36. Abdullah Mohammed Sulaiman al-Moheiseni - Saudi
37. Hamed Abdullah Ahmed al-Ali - Kuwaiti
38. Ayman Ahmed Abdel Ghani Hassanein - Egyptian
39. Assem Abdel-Maged Mohamed Madi - Egyptian
40. Yahya Aqil Salman Aqeel - Egyptian
41. Mohamed Hamada el-Sayed Ibrahim - Egyptian
42. Abdel Rahman Mohamed Shokry Abdel Rahman - Egyptian
43. Hussein Mohamed Reza Ibrahim Youssef - Egyptian
44. Ahmed Abdelhafif Mahmoud Abdelhady - Egyptian
45. Muslim Fouad Tafran - Egyptian
46. Ayman Mahmoud Sadeq Rifat - Egyptian
47. Mohamed Saad Abdel-Naim Ahmed - Egyptian
48. Mohamed Saad Abdel Muttalib Abdo Al-Razaki - Egyptian
49. Ahmed Fouad Ahmed Gad Beltagy - Egyptian
50. Ahmed Ragab Ragab Soliman - Egyptian
51. Karim Mohamed Mohamed Abdel Aziz - Egyptian
52. Ali Zaki Mohammed Ali - Egyptian
53. Naji Ibrahim Ezzouli - Egyptian
54. Shehata Fathi Hafez Mohammed Suleiman - Egyptian
55. Muhammad Muharram Fahmi Abu Zeid - Egyptian
56. Amr Abdel Nasser Abdelhak Abdel-Barry - Egyptian
57. Ali Hassan Ibrahim Abdel-Zaher - Egyptian
58. Murtada Majeed al-Sindi - Bahraini
59. Ahmed Al-Hassan al-Daski - Bahraini

## **List of entities:**

1. Qatar Center for Voluntary Work - Qatar
2. Doha Apple Company (Internet and Technology Support Company) -Qatar
3. Qatar Charity - Qatar
4. Sheikh Eid al-Thani Charity Foundation (Eid Charity) - Qatar
5. Sheikh Thani Bin Abdullah Foundation for Humanitarian Services -Qatar
6. Saraya Defend Benghazi - Libya
7. Saraya al-Ashtar - Bahrain
8. Coalition February 14 - Bahrain
9. The Resistance Brigades - Bahrain
10. Hezbollah Bahrain - Bahrain
11. Saraya al-Mukhtar - Bahrain
12. Harakat Ahrar Bahrain - Bahrain Movement

## **Egypt, Gulf States set preconditions to end severing relations with Qatar**

Egypt, Saudi Arabia, the UAE and Bahrain set 13 preconditions to end severing relations with Qatar. A list of these preconditions was handed over to Qatar by Kuwait on 23/6/2017.

Following are the preconditions:

1. Downgrading diplomatic relations with Iran and expelling members of Iran's Revolutionary Guard from Qatar.
2. Immediate termination of the Turkish military base in Doha that is now under construction and ending any military cooperation with Turkey.
3. Severing all relations with terrorist organizations, atop of which come the Brotherhood, Daesh, Al-Qaeda, and Hizbollah.
4. Stopping all forms of Qatari funding of any individuals, groups or organizations that have been designated as terrorists by Saudi Arabia, the UAE, Egypt and Bahrain.
5. Handing over all terrorist elements that are wanted in Saudi Arabia, the UAE, Egypt and Bahrain to their countries of origin and not harboring any other elements in the future.
6. Shutting down Al Jazeera TV channel and its affiliate stations.
7. Shutting down news outlets that are financed by Qatar either directly and indirectly.

8. Ending interference in the internal affairs of other countries and their foreign interests while stopping any contacts with opposition elements of the four countries.
9. Paying off compensations to the four countries for losses and casualties that were caused due to Qatar's policies in recent years.
10. Qatar's policies and stances should be in harmony with other Gulf and Arab countries.
11. Qatar should hand over all databases of opposition elements which it supports while explaining all forms of support it offers to them.
12. These preconditions should be approved within 10 days of their announcement otherwise they will be deemed null and void.
13. Reports will be compiled regarding an agreement on this score, if it would be reached, once per month for the first year and then once every three months for the second year.

### **Egyptian, Saudi, UAE, Bahraini FMs Issue Joint Statement on Qatar's Crisis**

The foreign ministers of Egypt, Saudi Arabia, the UAE and Bahrain; the four Arab countries fighting terrorism, issued a joint statement on Wednesday after a lengthy meeting that was held in Cairo earlier in the day and lasted for four hours. The meeting took up their crisis with Qatar over its support for terrorism and interference in the internal affairs of the four countries. Following is the text of the joint statement that was read out by Egyptian Foreign Minister Sameh Shoukry after the meeting:

The foreign ministers of the Arab Republic of Egypt, Saudi Arabia, the UAE and Bahrain met in Cairo on July 5, 2017 for consultations over current efforts being exerted to stop support by the State of Qatar for terrorism and extremism and its interference in the internal affairs of Arab countries and the subsequent threats of the Qatari policies on the Arab national security and international peace and security.

The four countries confirmed their stance which is based on the necessity of commitment to all international agreements, conventions and resolutions along with the well-established principles of the charters of United Nations, the Arab League and the Organization of Islamic Cooperation along with agreements on fighting international terrorism.

#### **The following principles were highlighted:**

- 1- Commitment to fighting terrorism and extremism in all their forms and preventing their funding or providing safe havens for terrorists.
- 2- Stopping all acts of instigation and the discourse of hatred or violence
- 3- Full commitment to Riyadh agreement for the year 2013 and its supplementary agreement and its mechanism of implementation for the year 2014 within the framework of the Gulf Cooperation Council.
- 4- Commitment to the outcome of the Arab-Islamic-American Summit that was held in Riyadh in May 2017.
- 5- Stopping interference in the internal affairs of other countries and stopping supporting outlawed entities.

6- All countries of the international community are responsible for fighting all forms of terrorism and extremism as they constitute a threat to international peace and security.

The four Arab countries confirmed that supporting terrorism and extremism and interference in the internal affairs of Arab countries do not tolerate any bargaining or procrastination. The demands that were presented to Qatar came within the framework of guaranteeing commitment to the six principles that were above mentioned and for protecting the Arab national security and maintaining the international peace and security along with fighting terrorism and extremism. These demands are also meant to provide a suitable atmosphere for hammering out a political settlement to regional crises as it became impossible to tolerate the destructive role undertaken by the State of Qatar in these crises.

The four Arab countries underlined that the measures that were adopted and that will be maintained are an outcome of the State of Qatar's violation of its commitments in accordance with international law and its continued interference in the internal affairs of Arab countries and support for terrorism and extremism which constitute a threat to regional security.

The four countries extended thanks and appreciation to Kuwait Emir Sheikh Sabah al-Ahmad al-Sabah for his good offices with Qatar. They regretted the negative response by Qatar which showed lack of seriousness in handling the root causes of the problem and failure to reconsider its policies and practices in a way that indicates failure to recognize the gravity of the situation.

The four countries asserted their keenness on relations among the Arab peoples and their appreciation for the brotherly Qatari people. Shoukry expressed hope that wisdom would prevail and Qatar would take the right decision.

The four countries confirmed that it is high time that the international community should shoulder its responsibility towards putting an end to supporting terrorism and extremism and that there is no room now for any entity or party that is involved in practicing, funding or supporting terrorism and extremism in the international community or as a partner to any efforts for peaceful settlement to any political crisis in the region.

Within this framework, the four countries expressed appreciation for the firm stance that was adopted by US President Donald Trump on the necessity of ending immediately all forms of support to terrorism and extremism and that there will be zero tolerance with any violations by any party on this score.

The ministers agreed to follow up the situation and hold their coming meeting in Manama.

## **International Responses**

### **OIC calls on Qatar to honor its commitments**

The General Secretariat of the Organization of Islamic Cooperation (OIC) called on Qatar to honor its previous commitments and agreements signed within the Gulf Cooperation Council (GCC), particularly with regard to ceasing support for terrorist groups and their activities and ending media incitement.

In a statement on its website, the OIC said that it has been following closely the current developments in the Gulf region, namely the severance of diplomatic relations with Qatar by many OIC member states following information and evidence of hostile acts emanating from Qatar.

It underscored the need for all member states, including Qatar, to adhere to the principles of the OIC Charter, which calls for abiding by the policy of good neighborliness, respect for sovereignty, independence and territorial integrity of member states, and non-interference in

their domestic affairs.

### **Hashtag "severing ties with Qatar" top trend on Twitter**

The hashtag "severing ties with Qatar" became top trend on social networking website Twitter after Egypt, Saudi Arabia, UAE, Bahrain, Yemen and Libya made a decision Monday to sever their diplomatic relations with Qatar.

The users of the hashtag in various Arab countries supported the decision to sever ties over Qatar's involvement in funding terrorism.

They also condemned the Qatari regime as well as its policies in backing terrorist groups and interfering in the internal affairs of the Arab countries.

### **Trump: Recent measures against Qatar may be beginning to end terrorism**

US President Donald Trump said on Tuesday that the recent measures against Qatar could be the beginning of the end of terrorism.

"During my recent trip to the Middle East I stated that there can no longer be funding of Radical Ideology.

### **Pakistan Scholars Council condemns Qatar's 'complicity with Iran'**

The Pakistan Ulema (scholars) Council has expressed its condemnation of Qatar's support for Houthi militias and their complicity with Iran against Saudi Arabia, according to a statement released on Monday.

"It is regrettable and alarming that the State of Qatar announced its support for Iran after the Arab-American Islamic Summit, in which 56 Islamic countries announced their efforts to combat terrorism," said Taher Mahmood al-Ashrafi, chairman of the council.

The council also condemned Qatar's of terrorist and extremist organizations that "seek to destabilize security in a number of Islamic countries".

The statement issued by the council in Islamabad also urged the government of Qatar to take into account "the feelings of Muslims in Iraq, Syria and Yemen and address the reservations of the Islamic nation against its position, which led to the unity of the Islamic nation and weakened its entity".

"Qatar should have sought the support of Muslims in Syria, Iraq and Yemen rather than supporting Iran in its regional plans," the statement added.

### **Sisi, Trump stress over phone necessity to continue combating terrorism decisively**

President Abdel Fattah El Sisi and US President Donald Trump on Friday 09/06/2017 stressed over the phone the necessity to continue combating terrorism decisively.

During the call, the two leaders underlined the importance of standing united against terrorism, armed and terrorist groups and countries financing and supporting terrorism both morally and materially.

They also agreed that the policy of interfering in other countries' affairs by supporting terrorist groups and extremist thought in the region is unacceptable.

They stressed the determination of Egypt and the United States to continue coordination and consultation at the highest levels to ensure that efforts exerted will restore stability and eradicate terrorism in the Middle East region.

In statements, Presidential Spokesman Alaa Youssef said that the two presidents discussed the latest development in the Middle East, particularly counter-terrorism efforts.

Sisi, during the phone conversation, lauded Trump's participation in the Arab-Islamic-American summit that was held in Riyadh in May and culminated in forming a united front to confront terrorism at all levels, the spokesman added.

### **Egyptian, Saudi FMs discuss over phone ties with Qatar**

Egyptian Foreign Minister Sameh Shoukry and his Saudi counterpart Adel al Jubeir discussed over the phone a host of regional files, topped by two countries' ties with Qatar.

In press statements, Foreign Ministry Spokesman Ahmed Abu Zeid said that the two ministers also exchanged views on means of coordinating stances in regional and international gatherings.

### **CNN documents confirm Qatar's failure to respect commitment**

## **Annex 7**

“Kingdom of Saudi Arabia severs diplomatic and consular relations with Qatar 3 Jeddah”,  
*Saudi Press Agency, 5 June 2017*



## Kingdom of Saudi Arabia severs diplomatic and consular relations with Qatar 3 Jeddah

Monday 1438/9/10 - 2017/06/05

Since 1995, the Kingdom of Saudi Arabia and its brothers have made strenuous and continued efforts to urge the authorities in Doha to abide by its commitments and agreements, yet, they have repeatedly violated their international obligations and the agreements they signed under the umbrella of the Gulf Cooperation Council (GCC) for Arab States to cease the hostilities against the Kingdom and stand against terrorist groups and activities of which the latest one was their failure to implement Riyadh Agreement.

In accordance with the decision to cut off diplomatic and consular relations, Saudi citizens are prohibited from traveling to Qatar, residing in or passing through it while they, residents and visitors have to hurry leaving its territories within 14 days.

The decision, for security reasons, unfortunately prevents Qatari citizens' entry to or transit through the Kingdom of Saudi Arabia and those Qatari residents and visitors have to leave Saudi territories within 14 days, confirming the Kingdom's commitment and keenness to provide all facilities and services for Qatari pilgrims and Umrah performers.

The Kingdom of Saudi Arabia affirms that it has long been patient despite the fact that the authorities in Doha continue to evade their commitments and conspire against it in the interest of the Qatari people, which is a natural and genuine extension of their brethren in the Kingdom and an integral part of their pillars. The Kingdom will continue to support the people of Qatar, its security and stability regardless of the hostile practices being carried out by the authorities in Doha.

--SPA



## **Annex 8**

“Statement of the Kingdom of Bahrain on the severance of diplomatic relations with the State of Qatar”, *Ministry of Foreign Affairs of the Kingdom of Bahrain*, 5 June 2017



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Statement of the Kingdom of Bahrain on the severance of diplomatic relations with the State of Qatar



Based on the insistence of the State of Qatar on continuing to destabilize the security and stability of the Kingdom of Bahrain, to intervene in its affairs, to continue the escalation and incitement of the media, to support armed terrorist activities, to finance groups associated with Iran and to subvert and spread chaos in Bahrain in flagrant violation of all agreements and principles of international law without regard to values, law, morals, consideration of the principles of good neighborliness, or commitment to the constants of Gulf relations, shunning all previous pledges.

The Kingdom of Bahrain announces the severance of diplomatic relations with the State of Qatar to preserve its national security as well as the withdrawal of the Bahraini diplomatic mission from Doha, to provide all members of the Qatari diplomatic mission 48 hours to leave the country with the completion of the necessary procedures and the closure of airspace, ports and the territorial waters for shipping to and from Qatar within 24 hours of this statement.

As the Government of the Kingdom of Bahrain prohibits citizens from traveling to or residing in Qatar, it regrets that Qatari nationals will not be allowed to enter or pass through its territory. It also grants Qatari residents and visitors 14 days to leave the Kingdom to avoid any hostile attempts and activities that exploit the situation despite the pride and high trust in our brothers the Qatari people and their care for their second country.

These dangerous Qatari practices have not only been limited to the Kingdom of Bahrain but have reached sister countries that have been aware of these practices, which embody a very dangerous pattern that can not be met with silence or accepted, but which must be vigorously and resolutely addressed.

While the Kingdom of Bahrain regrets this decision to maintain its security and stability, it affirms its keenness for the brotherly Qatari people who are aware of our suffering and witness with each terrorist operation, the toll on victims of their brothers and family in Bahrain as a result of their government's continued support of terrorism at all levels and to overthrow the legitimate regime in the Kingdom of Bahrain.

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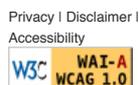


Bahrain eVisas



\*Ministry of Foreign Affairs' is responsible for coordinating and implementing all matters related to the nation's foreign policy, Bahrain's relations with other countries and international organizations, and to protecting the interests of Bahraini citizens abroad.

Ministry of Foreign Affairs  
P.O. Box 547  
Government Avenue  
Manama  
Kingdom of Bahrain



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## **Annex 9**

“Chad shuts down Qatar embassy”, *Emirates News Agency*, 23 August 2017

# Chad shuts down Qatar embassy

Wed 23-08-2017 19:07 PM



N'DJAMENA, 23rd August, 2017 (WAM) -- Chad announced on Wednesday the closure of Qatar's embassy in N'Djamena, with a ten day notice for its staff to depart, as a result of Doha's involvement in destabilising the stability and security of the central African nation via its neighbour, Libya.

"In order to safeguard peace and security in the region, Chad calls on Qatar to cease all actions that could undermine its security as well as those of the countries of the Lake Chad basin and the Sahel," the foreign ministry statement said.

## **Annex 10**

“Comoros severs diplomatic relations with Qatar”, *Saudi Press Agency*, 7 June 2017



Moroni, Ramadan 12, 1438, June 07, 2017, SPA -- The United Republic of Comoros decided today to sever diplomatic relations with the State of Qatar.

This came in a memorandum sent by the Ministry of Foreign Affairs and International Cooperation to the Embassy of the State of Qatar in Moroni saying, "This decision is effective from today, Wednesday.

-- SPA

14:45 LOCAL TIME 11:45 GMT



[www.spa.gov.sa/1638089](http://www.spa.gov.sa/1638089) (<http://www.spa.gov.sa/1638089>)

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**Annex 11**

“Statement by the Government of Maldives”, *Ministry of Foreign Affairs of the Republic of Maldives*, 5 June 2017

[Home \(/index.php/en/\)](#) > [MEDIA](#) > [News \(/index.php/en/mediacentre/news\)](#)

## Statement by the Government of Maldives

📅 Created: 05 June 2017

📅 Male': 5 June 2017

The Government of Maldives has decided to sever diplomatic relations with Qatar effective from today, 5 June 2017.

The Maldives took the decision because of its firm opposition to activities that encourage terrorism and extremism. The Maldives has always pursued a policy of promoting peace and stability in the Middle East. The Maldives reiterates its commitment to work with countries that promote peace, stability, and show solidarity in the fight against terrorism.

The Maldives established diplomatic relations with Qatar on 26 May 1984.

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<a href="/index.php/en/component/tags/tag/3-oic">OIC (/INDEX.PHP/EN/COMPONENT/TAGS/TAG/3-OIC)</a>	1
<a href="/index.php/en/component/tags/tag/5-mongolia">MONGOLIA, (/INDEX.PHP/EN/COMPONENT/TAGS/TAG/5-MONGOLIA,)</a>	1
<a href="/index.php/en/component/tags/tag/6-credentials">CREDENTIALS, (/INDEX.PHP/EN/COMPONENT/TAGS/TAG/6-CREDENTIALS,)</a>	1
<a href="/index.php/en/component/tags/tag/7-health">HEALTH, (/INDEX.PHP/EN/COMPONENT/TAGS/TAG/7-HEALTH,)</a>	1
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<a href="/index.php/en/component/tags/tag/9-palestine">PALESTINE, (/INDEX.PHP/EN/COMPONENT/TAGS/TAG/9-PALESTINE,)</a>	1
<a href="/index.php/en/component/tags/tag/12-political">POLITICAL, (/INDEX.PHP/EN/COMPONENT/TAGS/TAG/12-POLITICAL,)</a>	1
<a href="/index.php/en/component/tags/tag/13-pakistan">PAKISTAN (/INDEX.PHP/EN/COMPONENT/TAGS/TAG/13-PAKISTAN)</a>	1
<a href="/index.php/en/component/tags/tag/14-uns">UNSC, (/INDEX.PHP/EN/COMPONENT/TAGS/TAG/14-UNSC,)</a>	1
<a href="/index.php/en/component/tags/tag/17-india">INDIA (/INDEX.PHP/EN/COMPONENT/TAGS/TAG/17-INDIA)</a>	1

## ARCHIVED

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[December, 2016 \(/index.php/en/archived/2016/12\)](/index.php/en/archived/2016/12)

[October, 2016 \(/index.php/en/archived/2016/10\)](/index.php/en/archived/2016/10)

[January, 2016 \(/index.php/en/archived/2016/1\)](/index.php/en/archived/2016/1)

[December, 2015 \(/index.php/en/archived/2015/12\)](/index.php/en/archived/2015/12)

[November, 2015 \(/index.php/en/archived/2015/11\)](/index.php/en/archived/2015/11)

[October, 2015 \(/index.php/en/archived/2015/10\)](/index.php/en/archived/2015/10)

[September, 2015 \(/index.php/en/archived/2015/9\)](/index.php/en/archived/2015/9)

[August, 2015 \(/index.php/en/archived/2015/8\)](/index.php/en/archived/2015/8)

[July, 2015 \(/index.php/en/archived/2015/7\)](/index.php/en/archived/2015/7)

[June, 2015 \(/index.php/en/archived/2015/6\)](/index.php/en/archived/2015/6)

[May, 2015 \(/index.php/en/archived/2015/5\)](/index.php/en/archived/2015/5)

## CONTACT US

Ministry of Foreign Affairs,  
Male', Republic of Maldives, 20077

Tel Number: 00960 332-3400

Emergency Contact: 00960 798-3400

[Contact Us \(/index.php/mfa/contact-us\)](/index.php/mfa/contact-us)

## CONSULAR SERVICE

[Travelling Abroad? Register Here \(/index.php/en/consular/before-you-travel/eregister\)](/index.php/en/consular/before-you-travel/eregister)

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[Information for Travellers \(/index.php/en/consular/for-maldives-citizens/information-for-travellers\)](/index.php/en/consular/for-maldives-citizens/information-for-travellers)

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[Documents Attestation Services \(/index.php/en/consular/for-maldives-citizens/documents-attestation-service\)](/index.php/en/consular/for-maldives-citizens/documents-attestation-service)

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[Visa Facilitation Service \(/index.php/en/consular/for-maldives-citizens/visa-facilitation-service\)](/index.php/en/consular/for-maldives-citizens/visa-facilitation-service)

## FOREIGN RELATIONS

[Foreign Policy \(/index.php/en/?Itemid=732\)](/index.php/en/?Itemid=732)

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[Foreign Policy Principles \(/index.php/en/foreign-relations/foreign-policy-principles\)](/index.php/en/foreign-relations/foreign-policy-principles)

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[Foreign Policy Goals \(/index.php/en/foreign-relations/foreign-policy-goals\)](/index.php/en/foreign-relations/foreign-policy-goals)

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[Foreign Policy Strategies \(/index.php/en/foreign-relations/foreign-policy-strategies\)](/index.php/en/foreign-relations/foreign-policy-strategies)

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## **Annex 12**

“La Mauritanie décide de rompre ses relations diplomatiques avec Qatar”, *Agence Mauritanienne d’Information*, 6 June 2017

## Activités gouvernementales

**La Mauritanie décide de rompre ses relations diplomatiques avec Qatar**

Nouakchott, 06/06/2017



Le gouvernement de la République Islamique de Mauritanie a décidé de rompre ses relations diplomatiques avec l'Etat de Qatar. C'est qui ressort d'un communiqué rendu public mardi soir à Nouakchott par le ministère des affaires étrangères et de la coopération dont voici le texte intégral :

« Le gouvernement de la République Islamique de Mauritanie a, à toutes les occasions, exprimé son fort engagement de défendre les intérêts supérieurs de la Nation Arabe et son attachement au respect du principe de la souveraineté des Etats ; de la non-ingérence dans leurs affaires

intérieures, œuvrant constamment à renforcer la stabilité et la sécurité au sein de notre nation arabe et dans le monde. Ses positions ont toujours traduit sa profonde conviction de la nécessité de renforcer la coopération et la solidarité entre les frères et son engagement à faire face à tout ce qui est de nature à menacer la sécurité et la stabilité de notre nation arabe.

Fort malheureusement, l'Etat de Qatar a pris l'habitude d'œuvrer à mettre en cause ces principes sur lesquels est fondée l'action arabe commune. La politique de ce pays s'est liée dans la région au soutien d'organisations terroristes ; de la propagation d'idées extrémistes et s'est attelée à semer l'anarchie et répandre les tensions dans de nombreux pays arabes, ce qui a causé de grandes catastrophes humanitaires dans ces pays, en Europe et dans le monde ; tout comme cela a conduit à la dislocation d'institutions de pays frères et à la destruction de leurs infrastructures de base.

Dans le contexte de la persistance de Qatar à continuer ces politiques, le gouvernement de la République Islamique de Mauritanie a décidé de rompre ses relations diplomatiques avec l'Etat de Qatar ».

*Dernière modification : 06/06/2017 23:15:26*

### **Annex 13**

“Senegal, Gabon join boycott of Qatar”, *Middle East Monitor*, 9 June 2017

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# Senegal, Gabon join boycott of Qatar



An overview of Doha city, Qatar [Shell/Flickr]

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June 9, 2017 at 10:24 am

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Senegal announced on Wednesday that it has decided to recall its ambassador from the Gulf state of Qatar for consultations.

“We are following with deep concern the current situation in the Gulf region and as well call on other countries in the region to do same,” said a

statement by the West African nation's Foreign Ministry.

The statement added that Senegal is expressing its "active solidarity" with Saudi Arabia, the United Arab Emirates, Bahrain, Egypt, and **Yemen**, which have all **cut ties** with Qatar, accusing it of supporting terrorism.

Qatar has vehemently **denied the accusations**, calling it "unjustified."

Senegal's action follows similar moves on Tuesday by **Mauritania** to the north and Gabon to the south.

Mauritanian said Qatar had violated the principles of Arab unity.

Oil producer Gabon condemned Qatar for "failing to respect international commitments and agreements on counter-terrorism," a statement from its foreign ministry said, The Central African nation was "preoccupied with Qatar's continuing support for terrorist groups".

Categories   Africa   Egypt   Gabon   Mauritania

Middle East   News   Qatar   Saudi Arabia

Senegal   UAE   Yemen



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## **Annex 14**

“Yemen cuts diplomatic ties with Qatar: state news agency”, *Reuters*, 5 June 2017



Brexit

Sustainability

Imprisoned In Myanmar

Future of Cars

Venezuela

World At Work

WORLD NEWS

JUNE 5, 2017 / 8:24 AM / 2 YEARS AGO

## Yemen cuts diplomatic ties with Qatar: state news agency



DUBAI (Reuters) - Yemen's internationally recognized government cut ties with Qatar on Monday, accusing it of working with its enemies in the Iran-aligned Houthi movement, state news agency Saba reported.

“Qatar’s practices of dealing with the (Houthi) coup militias and supporting extremist groups became clear,” the government said in a statement.

It added that Yemen supported a decision by a Saudi-led coalition fighting for more than two years to oust the Houthis from the capital Sanaa to remove Qatar from its ranks announced earlier on Monday.

Reporting By Noah Browning; Editing by Gareth Jones

*Our Standards: [The Thomson Reuters Trust Principles.](#)*

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## **Annex 15**

“Jordan downgrades relations with Qatar and bans Al Jazeera”, *The National*, 7 June 2017

## Jordan downgrades relations with Qatar and bans Al Jazeera

Amman announces that it has decided to downgrade, though not sever, its diplomatic ties with Qatar after “examining the reasons behind the crisis”.



Suha Maayeh  
June 7, 2017

AMMAN // Jordan has asked Qatar’s ambassador in Amman to leave the country within days and revoked the licence of Al Jazeera television channel.

Saudi Arabia, the UAE, Egypt and Bahrain severed diplomatic relations and cut transport and trade links with Qatar on Monday, accusing Doha of support for Islamist militants and Iran.

Amman announced on Tuesday night it had decided to downgrade, though not sever, its diplomatic ties with Qatar after “examining the reasons behind the crisis”.

“The decision to scale down the diplomatic representation means the ambassador leaves the country in days,” a Jordanian official said.

However, the Qatari embassy’s chargé d’affaires will still represent Doha’s foreign ministry, he added.

Mohammad Momani, minister of state for media affairs, said achieving regional peace and stability and having Arab countries agree on policies to end crises in the Arab region are top priorities for the kingdom.

“The government hopes that Arab countries would overcome this regrettable stage and resolve the crisis to ensure that Arab countries cooperate to built a better future for their people,” he said.

Dr Anwar Gargash’s, the UAE’s Minister of State for Foreign Affairs, said on Wednesday that more punitive measures on Qatar, including further curbs on business, remain on the table in the dispute.

“What we are hoping is that our action will send some sense into the decision-makers in Qatar when they will see their overall interest is in not undermining their neighbours,” he told Reuters.

Dr Gargash said he hoped further steps were not needed but could not be ruled out.

“We hope that cooler heads will prevail, that wiser heads will prevail and we will not get to that,” he said.

foreign.desk@thenational.ae

*Updated: June 7, 2017 04:00 AM*

## **Annex 16**

“Niger recalls ambassador to Qatar”, *Khaleej Times*, 10 June 2017

HOME (/) > REGION (/REGION) > QATAR CRISIS (/REGION/QATAR-CRISIS)

# Niger recalls ambassador to Qatar

Wam/NIAMEY  
Filed on June 10, 2017



The Doha skyline  
(AP)

## MoFA said the decision was made in solidarity with the four Gulf states that have banned citizens from traveling to Doha

Niger, on Saturday, said it had recalled its ambassador to Qatar, in solidarity with the UAE, Saudi Arabia, Bahrain and Egypt, which cut ties with Doha on Monday.

In a statement, Niger's Ministry of Foreign Affairs, said the decision was made, in solidarity with the four states that have banned their citizens from traveling to Doha. They have since closed off their airspace, territorial waters and land borders to Qatari vehicles, aircraft and ships.

Egypt, Saudi Arabia, Bahrain and the UAE announced their decision to sever diplomatic relations with Qatar (<http://www.khaleejtimes.com/region/qatar-crisis>) on 5th June.

Later, Yemen, the interim Libyan government, the Maldives, Mauritius, Comoros and Mauritania also severed diplomatic relations with Qatar.

This was followed by Jordan downgrading its diplomatic relations with Qatar, and Senegal recalling its ambassador in Doha for consultations.

## **Annex 17.A**

Letter from the United Arab Emirates Federal Authority for Identity and Citizenship to the Ministry of Foreign Affairs and International Cooperation of the United Arab Emirates, 10 January 2019 (English translation of Arabic original)

**Federal Authority for Identity and Citizenship**

No. 30/3/32

Date: January 10, 2019 corresponding to, First Jamadi 02, 1440 Hijri

Confidential and urgent

**To, Director of Foreigners Affairs Department**

**Ministry of Foreign Affairs and International Cooperation**

Subject, Statistics of Qatari Nationals,

Reference: your letter No. ع.ش/ق/م ع.ش/ق/ج/ش/5/4/37/30403 dated December 23, 2018

We would like to send you all the respect, and according to the request in your letter, referred to above, about the statistics of the entry and exit movements for the Qatari nationals, and the permits requests, and the number of the Qatari nationals residing in the state, we would like to clarify to you the following:

- 1- With regards to the entry and exit movements of the Qatari nationals to the state for the period from June 1, 2018 to December 31, 2018, it amounted to (2876).
- 2- With regards to the individuals who submitted a request for an entry and exit for the period from July 9, 2018 to December 22, 2018; the amount of the submitted requests was (3563), (3353) requests were approved and (210) requests were rejected.
- 3- The number of the Qatari nationals residing in the state, and who hold a UAE identification document, are (702).

Attached are detailed records for the statistics mentioned above.

For your attention and your procedures,

Please accept our regards,

Officer, Hamad Hasan Al-Shaikh Al-Ze'abi

Director of Information Security Department

A Copy to:

- Director of the Office of His Excellency the Chairman of the Board of Directors, for your attention.
- Deputy Director of Security Information Management, for your attention.
- Director of Security Coordination Branch, for your attention.
- To follow
- 9288- January 9, 2019  
[Illegible]

9288- January 10, 2019



الهيئة الاتحادية للهوية والجنسية  
FEDERAL AUTHORITY FOR IDENTITY & CITIZENSHIP



الرقم : 32/3/30  
التاريخ : 2019/01/10 م  
الموافق : 02/جمادي الأولى / 1440 هـ

سري للغاية وعاجل جداً

سعادة / مدير إدارة شؤون الرعايا الأجانب المحترم  
وزارة الخارجية والتعاون الدولي

السلام عليكم ورحمة الله وبركاته ،،،

الموضوع : إحصائيات رعايا ومواطني دولة قطر

الإشارة : كتابكم رقم م ع / ش ق / ش ق ج / 30403/37/4/6 بتاريخ 2018/12/23م

يطيب لنا أن نبعث لكم بخالص التحية والتقدير، وبناءً على ماتم طلبه بكتابكم الإشارة أعلاه بشأن الإحصائيات المطلوبة لحركات الدخول والخروج للرعايا القطريين للدولة، وطلبات التصاريح، وعدد المقيمين في الدولة من الجنسية القطرية نوضح لكم الآتي:

1- فيما يتعلق بحركات الدخول والخروج للرعايا القطريين للدولة للفترة من 2018/6/1 وحتى تاريخ 2018/12/31 بلغت ( 2876 ) .

2- وبالنسبة لمقدمي طلبات التصاريح للدخول والخروج من الفترة 2018/7/9 وحتى 2018/12/22 بلغت عدد الطلبات المقدمة ( 3563 )، وتمت الموافقة على (3353) تصريح، وتم رفض ( 210 ) طلب .

3- بلغ عدد المقيمين من الجنسية القطرية في الدولة والحاملين لهوية الإمارات ( 702 ) شخص .

مرفق طيه كشوفات تفصيلية للاحصائيات المذكورة أعلاه .

للتفضل بالإطلاع وإجراءاتكم لطفاً .

واقبلوا وافر الاحترام ،،،

المقدم/

حمد حسن الشيخ الزعابي  
مدير إدارة المعلومات الأمنية

نسخة إلى :

• سعادة / مدير مكتب معالي رئيس مجلس إدارة الهيئة ... المحترم للتفضل بالعلم .

- سعادة / نائب مدير إدارة المعلومات الأمنية بالإنابة.. المحترم للتفضل بالعلم .
- مدير فرع التنسيق الأمني بالإنابة ... المحترم للتفضل بالعلم والمتابعة
- للمتابعة
- 2019/01/09 - 9288



2019/01/10 - 9288

## **Annex 17.B**

Entry and exit movements of Qatari nationals to the United Arab Emirates, 1 June 2018 to 31 December 2018 (English translation of relevant parts of Arabic original)

**[Excel Redacted] Entrance and Exit for Qatari Nationals from 1 June 2018 until 31 December 2018**

FEDERAL AUTHORITY FOR IDENTITY AND CITIZENSHIP

UNIFIED NUMBER	NAME	AGE	SEX	THE MOVEMENT	DATE	PORT
<p>[This column includes the numbers provided] –</p> <p><b>Numbers Redacted</b></p>	<p>[This column includes the name of the Qatari nationals who entered and exited the country]</p> <p><b>Names Redacted</b></p>	<p>[This column provides the age of each national]</p>	<p>[Male or female]</p>	<p>[Entry or Exit]</p>	<p>[The date]</p>	<p>[The port name whether it is Abu Dhabi International Airport, Abu Dhabi Airport, Al-Ain Airport, Al Ghuwaifat, Al-Mudeef Port, Dubai International Airport, Rashed port, Al- Shandagha port, Al-Sharjah International Airport, Khatmat Malaha port, Shaklah port, Hatta border Cross, or Hili Port]</p>



































## **Annex 17.C**

Requests for entry and exit to the United Arab Emirates by Qatari nationals, 9 July 2018 to 22 December 2018 (English translation of relevant parts of Arabic original)



[Excel Redacted] Requests for Entry or Exit of Qatari Nationals from 9 July 2018 until 22 December 2018

FEDERAL AUTHORITY FOR IDENTITY AND CITIZENSHIP

Permit No.	Permit Date	Status of the permit	Used Permit	UNIFIED NUMBER	Name in Arabic	Name in English	Type of Permit	Type of Movement	Date of Movement	The Port	The Reason
[the number of the permit]	[The date of the permit]	[approved or rejected]	[Yes or No]	[This section includes the given numbers]  <b>Number redacted</b>	[the given name in Arabic]  <b>Name redacted</b>	[the given name in English]  <b>Name redacted</b>	[Entry or Exit]	[Entry, Exit, or "blank"]	[the given date of the movement, or "blank"]	[Abu Dhabi International Airport, Shaklah port, Abu Dhabi Airport, Al-Mudeef Port, Mezyad port, Al-Sharjah International Airport, Al Ghuwaifat, Hili Port, Dhabi International Airport, Malaha port, Hatta border Cross, Khatmat Malaha port or "blank"]	[Family relationship, medical treatment, or "Others"]



رقم التصريح	تاريخ التصريح	مئة التصريح	التصريح مستأجر أم المرحوم	الإسم العربي	الإسم	نوع التصريح	تاريخ الحرجة	تاريخ الصلاحية	المنطق	السبب
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منصة اولي	30/08/2018 04:00:14 PM	حراج	م	خلول	30/08/2018 09:04:44 AM	01077481900201830847201
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منصة اولي	10/08/2018 02:20:46 PM	حراج	م	خلول	11/12/2018 02:23:43 AM	010774919002018320099613
منصة اولي	27/08/2018 12:38:10 PM	حراج	م	مرفوض	10/08/2018 02:20:46 PM	010774919002018308392407
منصة اولي	21/09/2018 02:53:59 PM	حراج	م	خلول	27/08/2018 12:38:10 PM	010774919002018309121300
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مطار ابوظبي الامتدادية	12/10/2018 09:26:03 AM	مخول	مخول	عم	عزل	10/10/2018 01:29:36 PM	0101077491900201831004086
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مطار ابوظبي الامتدادية	14/11/2018 10:29:16 AM	مخول	مخول	عم	عزل	02/11/2018 12:49:28 AM	01010774919002018310931823
مطار ابوظبي الامتدادية	11/07/2018 10:11:11 PM	مخول	مخول	عم	عزل	12/12/2018 01:43:54 PM	0101077491900201831227231
مطار ابوظبي الامتدادية	22/12/2018 11:43:00 AM	مخول	مخول	عم	عزل	09/07/2018 11:12:13 AM	01010774619002018308984670
مطار ابوظبي الامتدادية	16/08/2018 04:46:00 PM	مخول	مخول	عم	عزل	10/11/2018 06:59:51 PM	0101077491900201831195803
مطار ابوظبي الامتدادية	04/10/2018 10:23:00 PM	مخول	مخول	عم	عزل	06/12/2018 10:34:20 PM	01010774919002018312073129
مطار ابوظبي الامتدادية	05/12/2018 04:24:00 PM	مخول	مخول	عم	عزل	01/08/2018 03:52:06 PM	0101077461900201830773075
مطار ابوظبي الامتدادية	18/08/2018 06:37:39 AM	مخول	مخول	عم	عزل	13/09/2018 08:24:30 PM	0101077461900201830907095
مطار ابوظبي الامتدادية	14/09/2018 12:24:50 AM	مخول	مخول	عم	عزل	04/12/2018 12:39:26 PM	0101077461900201831943636
مطار ابوظبي الامتدادية	14/09/2018 12:24:50 AM	مخول	مخول	عم	عزل	18/08/2018 11:18:55 AM	01010774619002018308273463
مطار ابوظبي الامتدادية	14/09/2018 12:24:50 AM	مخول	مخول	عم	عزل	12/09/2018 05:58:08 PM	0101077491900201830897244
مطار ابوظبي الامتدادية	14/09/2018 12:24:50 AM	مخول	مخول	عم	عزل	12/09/2018 05:58:08 PM	01010774919002018308936571
مطار ابوظبي الامتدادية	14/09/2018 12:24:50 AM	مخول	مخول	عم	عزل	12/09/2018 07:50:25 PM	01010774919002018309034239
مطار ابوظبي الامتدادية	14/12/2018 10:09:48 AM	مخول	مخول	عم	عزل	25/11/2018 08:24:51 PM	0101077491900201831615761
مطار ابوظبي الامتدادية	24/07/2018 07:25:00 PM	مخول	مخول	عم	عزل	09/07/2018 08:54:14 PM	01010774619002018307401476
مطار ابوظبي الامتدادية	07/11/2018 04:30:12 AM	مخول	مخول	عم	عزل	24/10/2018 06:38:08 AM	01010774619002018310540264
مطار ابوظبي الامتدادية	06/09/2018 06:25:47 PM	مخول	مخول	عم	عزل	23/12/2018 05:32:24 AM	0101077491900201831564166
مطار ابوظبي الامتدادية	04/09/2018 10:13:38 PM	مخول	مخول	عم	عزل	21/12/2018 01:55:22 PM	01010774619002018312519445
مطار ابوظبي الامتدادية	29/11/2018 01:40:18 AM	مخول	مخول	عم	عزل	03/09/2018 05:58:45 PM	01010774619002018308667588
مطار ابوظبي الامتدادية	15/12/2018 09:37:00 PM	مخول	مخول	عم	عزل	14/10/2018 12:25:07 PM	0101077491900201830958367
مطار ابوظبي الامتدادية	26/10/2018 03:28:58 AM	مخول	مخول	عم	عزل	21/12/2018 10:28:19 PM	0101077491900201831261890
مطار ابوظبي الامتدادية	03/11/2018 10:29:44 AM	مخول	مخول	عم	عزل	12/11/2018 09:50:25 PM	0101077491900201831286697
مطار ابوظبي الامتدادية	14/12/2018 07:24:53 PM	مخول	مخول	عم	عزل	21/11/2018 05:46:20 PM	010107746190020183157453
مطار ابوظبي الامتدادية	12/10/2018 05:27:51 PM	مخول	مخول	عم	عزل	24/10/2018 12:10:27 PM	0101077461900201831057814
مطار ابوظبي الامتدادية	03/11/2018 09:25:47 PM	مخول	مخول	عم	عزل	01/11/2018 10:07:22 PM	01010774919002018310922745
مطار ابوظبي الامتدادية	14/12/2018 07:24:53 PM	مخول	مخول	عم	عزل	12/12/2018 08:24:26 PM	0101077461900201831208332
مطار ابوظبي الامتدادية	12/10/2018 05:27:51 PM	مخول	مخول	عم	عزل	04/10/2018 12:50:09 PM	01010774819002018309922700
مطار ابوظبي الامتدادية	03/11/2018 09:25:47 PM	مخول	مخول	عم	عزل	30/09/2018 01:23:32 AM	0101077461900201830960855
مطار ابوظبي الامتدادية	03/11/2018 09:25:47 PM	مخول	مخول	عم	عزل	31/10/2018 02:15:30 PM	01010774619002018310869352
مطار ابوظبي الامتدادية	17/12/2018 02:24:56 PM	مخول	مخول	عم	عزل	01/11/2018 03:05:06 PM	01010774619002018310902828
مطار ابوظبي الامتدادية	13/12/2018 09:59:02 AM	مخول	مخول	عم	عزل	01/11/2018 10:23:26 PM	01010774619002018310734528
مطار ابوظبي الامتدادية	13/12/2018 09:59:02 AM	مخول	مخول	عم	عزل	12/12/2018 07:52:52 PM	01010774919002018312186357
مطار ابوظبي الامتدادية	05/09/2018 10:35:47 AM	مخول	مخول	عم	عزل	01/12/2018 07:30:10 AM	01010774919002018311908005
مطار ابوظبي الامتدادية	05/09/2018 10:35:47 AM	مخول	مخول	عم	عزل	01/12/2018 07:30:10 AM	01010774919002018311908003
مطار ابوظبي الامتدادية	05/09/2018 10:35:47 AM	مخول	مخول	عم	عزل	05/09/2018 08:00:04 PM	01010774619002018309077232
مطار ابوظبي الامتدادية	14/12/2018 03:11:49 PM	مخول	مخول	عم	عزل	23/12/2018 11:49:02 AM	0101077461900201831246024
مطار ابوظبي الامتدادية	14/12/2018 03:11:49 PM	مخول	مخول	عم	عزل	13/10/2018 07:49:22 PM	0101077491900201831213196
مطار ابوظبي الامتدادية	13/12/2018 01:53:32 PM	مخول	مخول	عم	عزل	12/12/2018 09:06:03 PM	0101077491900201832080046
مطار ابوظبي الامتدادية	23/09/2018 08:45:42 AM	مخول	مخول	عم	عزل	11/12/2018 10:27:56 PM	0101077491900201831234068
مطار ابوظبي الامتدادية	29/09/2018 09:09:45 AM	مخول	مخول	عم	عزل	05/12/2018 12:55:42 AM	0101077491900201831194711
مطار ابوظبي الامتدادية	27/10/2018 01:44:15 PM	مخول	مخول	عم	عزل	23/09/2018 01:23:03 PM	01010774919002018309367634
مطار ابوظبي الامتدادية	27/10/2018 01:44:15 PM	مخول	مخول	عم	عزل	29/09/2018 08:09:36 AM	01010774619002018309587556
مطار ابوظبي الامتدادية	07/11/2018 02:27:59 AM	مخول	مخول	عم	عزل	22/10/2018 06:56:51 PM	01010774919002018310492193
مطار ابوظبي الامتدادية	15/12/2018 10:23:23 AM	مخول	مخول	عم	عزل	22/10/2018 06:59:51 PM	01010774919002018310494202
مطار ابوظبي الامتدادية	21/12/2018 01:49:16 PM	مخول	مخول	عم	عزل	30/10/2018 04:09:14 AM	0101077491900201831076640
مطار ابوظبي الامتدادية	21/12/2018 01:49:16 PM	مخول	مخول	عم	عزل	29/11/2018 03:29:41 AM	010107749190020183181244
مطار ابوظبي الامتدادية	15/11/2018 08:58:21 PM	مخول	مخول	عم	عزل	19/12/2018 05:49:40 PM	0101077481900201831246244
مطار ابوظبي الامتدادية	01/11/2018 08:08:03 PM	مخول	مخول	عم	عزل	13/11/2018 05:39:38 AM	0101077491900201831289557
مطار ابوظبي الامتدادية	06/09/2018 07:23:31 PM	مخول	مخول	عم	عزل	01/11/2018 12:23:31 PM	01010774619002018310907038
مطار ابوظبي الامتدادية	06/09/2018 07:23:31 PM	مخول	مخول	عم	عزل	20/12/2018 02:19:17 PM	0101077491900201831249521
مطار ابوظبي الامتدادية	06/09/2018 07:23:31 PM	مخول	مخول	عم	عزل	23/12/2018 11:59:08 PM	0101077491900201831267319
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	09/07/2018 05:24:00 AM	01010774819002018306974194
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	07/11/2018 07:35:32 AM	0101077491900201831108020
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	20/09/2018 02:47:16 PM	01010774919002018309590283
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	21/11/2018 06:35:46 AM	01010774919002018311586064
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	14/12/2018 10:15:59 PM	0101077491900201831241215
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	30/10/2018 06:52:45 PM	0101077461900201830815629
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	17/08/2018 09:23:50 PM	01010774919002018308272764
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	15/08/2018 05:39:44 PM	01010774919002018308215029
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	11/09/2018 12:58:00 AM	01010774619002018308994545
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	15/08/2018 05:56:46 PM	01010774919002018308215004
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	11/09/2018 01:51:23 AM	01010774619002018308945999
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	08/10/2018 10:21:23 AM	01010774619002018309753009
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	22/10/2018 08:35:46 AM	01010774919002018310160309
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	22/10/2018 08:35:46 AM	01010774919002018310160328
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	19/12/2018 05:26:35 PM	01010774919002018312556763
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	11/12/2018 03:17:42 AM	0101077461900201831197351
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	21/08/2018 01:52:54 AM	01010774619002018308308765
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	31/10/2018 12:03:59 PM	01010774919002018310851831
مطار ابوظبي الامتدادية	25/08/2018 12:56:28 AM	مخول	مخول	عم	عزل	05/09/2018 05:09:36 PM	01010774919002018308076589

مطار ابوظبي الامتدادية	13/12/2018 09:31:24 PM	مخول	مخول	عم	عزل	01010774919002018312281800
مطار ابوظبي الامتدادية	16/12/2018 09:55:54 PM	مخول	مخول	عم	عزل	0101077491900201831244470
مطار ابوظبي الامتدادية	11/10/2018 07:35:26 PM	مخول	مخول	عم	عزل	010107749190020183120997306
مطار ابوظبي الامتدادية	20/12/2018 09:41:17 PM	مخول	مخول	عم	عزل	01010774919002018312568107
مطار ابوظبي الامتدادية	24/08/2018 04:02:43 AM	مخول	مخول	عم	عزل	01010774619002018308155171
مطار ابوظبي الامتدادية	29/08/2018 03:58:36 PM	مخول	مخول	عم	عزل	01010774619002018308499132
مطار ابوظبي الامتدادية	05/09/2018 03:05:03 AM	مخول	مخول	عم	عزل	01010774619002018308728438
مطار ابوظبي الامتدادية	04/09/2018 01:15:01 PM	مخول	مخول	عم	عزل	01010774619002018308702536
مطار ابوظبي الامتدادية	14/08/2018 09:41:17 PM	مخول	مخول	عم	عزل	01010774619002018308172559
مطار ابوظبي الامتدادية	02/11/2018 03:58:06 AM	مخول	مخول	عم	عزل	01010774919002018309199584
مطار ابوظبي الامتدادية	16/12/2018 11:45:15 PM	مخول	مخول	عم	عزل	0101077461900201831241270
مطار ابوظبي الامتدادية	15/12/2018 03:06:23 PM	مخول	مخول	عم	عزل	01010774619002018312326021
مطار ابوظبي الامتدادية	12/11/2018 02:43:17 PM	مخول	مخول	عم	عزل	0101077461900201831265047
مطار ابوظبي الامتدادية	15/11/2018 05:15:30 PM	مخول	مخول	عم	عزل	01010774919002018311413314
مطار ابوظبي الامتدادية	27/11/2018 09:45:18 PM	مخول	مخول	عم	عزل	01010774919002018311790359
مطار ابوظبي الامتدادية	30/07/2018 11:03:00 AM	مخول	مخول	عم	عزل	01010774819002018307644176
مطار ابوظبي الامتدادية	03/11/2018 10:50:09 PM	مخول	مخول	عم	عزل	01010774619002018310540198
مطار ابوظبي الامتدادية	06/12/2018 02:23:38 PM	مخول	مخول	عم	عزل	01010774919002018312014969





مستشفى الدمام	20/12/2018 09:46:50 AM	مخرج	مخرج	مخرج	16/12/2018 03:54:46 AM	01010774919002018312407074	مخرج	مخرج
مستشفى الدمام	22/08/2018 07:56:00 AM	مخرج	مخرج	مخرج	14/08/2018 11:32:17 AM	01010774619002018308237904	مخرج	مخرج
مستشفى الدمام	08/10/2018 10:30:22 PM	مخرج	مخرج	مخرج	07/10/2018 01:47:29 PM	0101077461900201830862415	مخرج	مخرج
مستشفى الدمام	14/12/2018 10:30:00 AM	مخرج	مخرج	مخرج	28/10/2018 01:36:11 PM	01010774919002018310683608	مخرج	مخرج
مستشفى الدمام	16/12/2018 08:41:19 PM	مخرج	مخرج	مخرج	16/12/2018 12:17:22 PM	0101077461900201831287798	مخرج	مخرج
مستشفى الدمام	13/12/2018 11:53:26 AM	مخرج	مخرج	مخرج	12/12/2018 10:39:13 PM	01010774919002018312223363	مخرج	مخرج
مستشفى الدمام	16/12/2018 06:45:19 PM	مخرج	مخرج	مخرج	15/12/2018 03:06:21 PM	01010774619002018312361904	مخرج	مخرج
مستشفى الدمام	19/12/2018 12:50:13 PM	مخرج	مخرج	مخرج	08/12/2018 08:08:52 PM	01010774919002018312079148	مخرج	مخرج
مستشفى الدمام	08/09/2018 05:29:51 PM	مخرج	مخرج	مخرج	26/08/2018 10:21:29 PM	01010774619002018308372254	مخرج	مخرج
مستشفى الدمام	14/12/2018 11:45:48 AM	مخرج	مخرج	مخرج	03/12/2018 10:02:57 PM	01010774919002018311926448	مخرج	مخرج
مستشفى الدمام	19/11/2018 07:07:36 AM	مخرج	مخرج	مخرج	18/11/2018 05:50:39 PM	01010774619002018311441868	مخرج	مخرج
مستشفى الدمام	19/11/2018 07:07:36 AM	مخرج	مخرج	مخرج	18/11/2018 10:12:01 PM	01010774619002018311444002	مخرج	مخرج
مستشفى الدمام	09/10/2018 08:04:00 PM	مخرج	مخرج	مخرج	08/10/2018 10:21:23 AM	0101077461900201830749390	مخرج	مخرج
مستشفى الدمام	18/12/2018 11:16:00 AM	مخرج	مخرج	مخرج	30/08/2018 03:23:35 AM	01010774819002018308516555	مخرج	مخرج
مستشفى الدمام	18/12/2018 11:16:00 AM	مخرج	مخرج	مخرج	15/12/2018 02:45:15 PM	01010774919002018311920891	مخرج	مخرج
مستشفى الدمام	18/12/2018 11:16:00 AM	مخرج	مخرج	مخرج	30/08/2018 01:48:19 AM	01010774819002018308516302	مخرج	مخرج
مستشفى الدمام	17/12/2018 02:25:09 PM	مخرج	مخرج	مخرج	01/09/2018 05:31:25 PM	01010774819002018308575226	مخرج	مخرج
مستشفى الدمام	15/12/2018 08:49:00 AM	مخرج	مخرج	مخرج	12/12/2018 07:52:52 PM	01010774919002018312284839	مخرج	مخرج
مستشفى الدمام	15/12/2018 08:49:00 AM	مخرج	مخرج	مخرج	21/11/2018 08:26:45 PM	01010774919002018311858997	مخرج	مخرج
مستشفى الدمام	15/12/2018 08:49:00 AM	مخرج	مخرج	مخرج	04/09/2018 10:21:25 AM	01010774919002018308608231	مخرج	مخرج
مستشفى الدمام	13/08/2018 08:41:00 AM	مخرج	مخرج	مخرج	22/12/2018 02:51:06 PM	01010774919002018312636119	مخرج	مخرج
مستشفى الدمام	14/12/2018 08:51:52 PM	مخرج	مخرج	مخرج	10/08/2018 01:50:41 PM	01010774819002018308209138	مخرج	مخرج
مستشفى الدمام	14/12/2018 08:51:52 PM	مخرج	مخرج	مخرج	07/12/2018 07:07:05 PM	01010774619002018312071889	مخرج	مخرج
مستشفى الدمام	28/09/2018 07:40:36 AM	مخرج	مخرج	مخرج	30/09/2018 02:46:35 PM	01010774619002018309639405	مخرج	مخرج
مستشفى الدمام	28/09/2018 07:40:36 AM	مخرج	مخرج	مخرج	30/09/2018 02:46:35 PM	01010774619002018309639555	مخرج	مخرج
مستشفى الدمام	27/09/2018 12:59:17 PM	مخرج	مخرج	مخرج	11/09/2018 05:55:28 PM	01010774919002018308981300	مخرج	مخرج
مستشفى الدمام	27/09/2018 12:59:17 PM	مخرج	مخرج	مخرج	17/12/2018 08:06:45 AM	01010774919002018312413447	مخرج	مخرج
مستشفى الدمام	27/09/2018 12:59:17 PM	مخرج	مخرج	مخرج	26/09/2018 02:06:23 PM	01010774819002018309488517	مخرج	مخرج
مستشفى الدمام	27/09/2018 12:59:17 PM	مخرج	مخرج	مخرج	26/09/2018 06:41:21 PM	01010774619002018309931333	مخرج	مخرج
مستشفى الدمام	27/09/2018 12:59:17 PM	مخرج	مخرج	مخرج	17/12/2018 09:05:41 PM	01010774619002018312466795	مخرج	مخرج
مستشفى الدمام	17/11/2018 06:53:20 AM	مخرج	مخرج	مخرج	18/11/2018 06:19:42 PM	01010774919002018311441709	مخرج	مخرج
مستشفى الدمام	14/12/2018 02:10:13 PM	مخرج	مخرج	مخرج	12/12/2018 11:02:26 AM	01010774919002018312136969	مخرج	مخرج
مستشفى الدمام	16/09/2018 09:15:19 PM	مخرج	مخرج	مخرج	12/09/2018 05:58:07 PM	01010774919002018308010382	مخرج	مخرج
مستشفى الدمام	03/10/2018 09:10:24 PM	مخرج	مخرج	مخرج	12/09/2018 05:58:07 PM	01010774619002018308078560	مخرج	مخرج
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مستشفى الدمام	22/11/2018 10:49:55 PM	مخرج	مخرج	مخرج	21/11/2018 06:14:46 AM	01010774619002018311545209	مخرج	مخرج
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مستشفى الدمام	20/12/2018 03:40:11 PM	مخرج	مخرج	مخرج	11/12/2018 10:37:56 PM	0101077491900201831247417	مخرج	مخرج
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مستشفى الدمام	06/11/2018 06:07:26 PM	مخرج	مخرج	مخرج	30/11/2018 06:31:18 AM	0101077461900201831893587	مخرج	مخرج
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مستشفى الدمام	30/10/2018 09:14:00 AM	مخرج	مخرج	مخرج	29/10/2018 11:55:09 PM	01010774919002018310381128	مخرج	مخرج
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مستشفى الدمام	29/11/2018 02:09:35 PM	مخرج	مخرج	مخرج	02/11/2018 03:08:06 AM	0101077491900201830913546	مخرج	مخرج
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مستشفى الدمام	13/12/2018 10:59:56 AM	مخرج	مخرج	مخرج	05/09/2018 10:04:18 AM	01010774619002018308736747	مخرج	مخرج
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مستشفى الدمام	18/11/2018 11:32:30 AM	مخرج	مخرج	مخرج	17/08/2018 02:36:36 PM	01010774619002018308707241	مخرج	مخرج
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مستشفى الدمام	23/12/2018 12:52:44 PM	مخرج	مخرج	مخرج	03/12/2018 12:52:44 PM	01010774619002018308237904	مخرج	مخرج
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منطقة قفيا	مركز الدواهي	06/12/2018 07:52:00 PM	مخول	مخول	عم	02/11/2018 12:09:28 AM	0101077461902018310931778
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منطقة قفيا	مركز الدواهي	13/12/2018 08:20:00 PM	مخول	مخول	عم	28/11/2018 12:27:43 PM	0101077461902018311823077
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منطقة قفيا	مركز الدواهي	16/08/2018 05:52:02 AM	مخول	مخول	عم	12/08/2018 07:41:01 PM	0101077461902018308074728
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منطقة قفيا	مركز الدواهي		مخول	مخول	عم	13/12/2018 04:41:13 AM	010107746190201831203233
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منطقة قفيا	مركز الدواهي	13/12/2018 11:53:18 AM	مخول	مخول	عم	27/11/2018 09:45:41 PM	0101077461902018311799338
منطقة قفيا	مركز الدواهي	12/11/2018 06:35:00 PM	مخول	مخول	عم	03/11/2018 10:51:09 PM	0101077491902018308204208
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منطقة قفيا	مركز الدواهي	09/08/2018 12:27:00 PM	مخول	مخول	عم	19/07/2018 05:42:56 PM	0101077461902018307050596
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منطقة قفيا	مركز الدواهي	19/12/2018 05:53:29 PM	مخول	مخول	عم	16/12/2018 06:47:10 PM	0101077461902018312408666
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منطقة قفيا	مركز الدواهي	07/11/2018 01:00:26 AM	مخول	مخول	عم	30/09/2018 02:28:35 PM	0101077461902018308037381
منطقة قفيا	مركز الدواهي	08/09/2018 06:21:27 AM	مخول	مخول	عم	16/08/2018 04:06:07 PM	01010774919020183080257298
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	23/12/2018 01:23:31 PM	0101077491902018312659866
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منطقة قفيا	مركز الدواهي	07/12/2018 01:32:04 AM	مخول	مخول	عم	28/11/2018 02:23:00 PM	0101077461902018311832086
منطقة قفيا	مركز الدواهي	13/12/2018 01:52:09 PM	مخول	مخول	عم	05/12/2018 12:55:42 PM	0101077491902018311995812
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منطقة قفيا	مركز الدواهي	07/09/2018 05:35:23 PM	مخول	مخول	عم	27/08/2018 07:41:29 PM	01010774619020183080412293
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	16/12/2018 03:06:40 AM	010107746190201831247117
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	18/12/2018 03:50:04 AM	0101077861902018312470624
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	17/12/2018 09:11:37 PM	0101077461902018312467398
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	24/10/2018 06:18:08 AM	0101077461902018310560250
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	19/09/2018 06:57:38 PM	01010774819020183080267292
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	23/09/2018 11:00:44 AM	0101077481902018308035584
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	23/12/2018 08:58:24 PM	0101077491902018312468740
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	05/12/2018 12:55:42 PM	0101077491902018311992407
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	09/12/2018 01:39:19 AM	0101077861902018312087991
منطقة قفيا	مركز الدواهي	16/08/2018 08:50:00 PM	مخول	مخول	عم	21/12/2018 02:34:51 PM	0101077491902018311532088
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	14/08/2018 01:05:15 PM	0101077461902018308008433
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	03/09/2018 09:42:14 PM	01010774619020183080634006
منطقة قفيا	مركز الدواهي	22/12/2018 01:46:33 PM	مخول	مخول	عم	09/12/2018 02:50:26 AM	0101077861902018312080010
منطقة قفيا	مركز الدواهي	06/12/2018 10:42:00 AM	مخول	مخول	عم	09/11/2018 05:42:33 PM	0101077861902018311000477
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	26/11/2018 10:19:01 PM	0101077491902018311952326
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	22/11/2018 10:28:33 PM	0101077461902018311635243
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	22/11/2018 10:28:33 PM	0101077461902018311635875
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	11/08/2018 12:36:00 PM	01010774619020183080016546
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	25/08/2018 03:13:56 PM	01010774919020183080323967
منطقة قفيا	مركز الدواهي	08/09/2018 09:40:51 PM	مخول	مخول	عم	11/12/2018 03:28:44 AM	010107746190201831147972
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	05/09/2018 02:03:07 PM	01010774619020183080372729
منطقة قفيا	مركز الدواهي	23/08/2018 10:20:00 AM	مخول	مخول	عم	13/08/2018 02:02:14 AM	0101077481902018308078516
منطقة قفيا	مركز الدواهي	21/07/2018 01:38:45 AM	مخول	مخول	عم	16/07/2018 06:14:31 PM	0101077491902018307238782
منطقة قفيا	مركز الدواهي	20/12/2018 07:03:00 PM	مخول	مخول	عم	15/12/2018 02:45:15 PM	0101077461902018311924532
منطقة قفيا	مركز الدواهي	19/08/2018 09:39:30 AM	مخول	مخول	عم	14/08/2018 04:51:29 PM	01010774919020183080159334
منطقة قفيا	مركز الدواهي		مخول	مخول	عم	16/12/2018 09:16:42 AM	0101077491902018312416502

منطقة قفيا	مركز الدواهي	02/11/2018 02:10:50 PM	مخول	مخول	عم	02/11/2018 02:10:50 PM	0101077461902018308032601
منطقة قفيا	مركز الدواهي	12/12/2018 12:44:40 AM	مخول	مخول	عم	12/12/2018 12:44:40 AM	010107749190201831233452
منطقة قفيا	مركز الدواهي	13/08/2018 10:28:08 PM	مخول	مخول	عم	13/08/2018 10:28:08 PM	0101077461902018308122012
منطقة قفيا	مركز الدواهي	22/11/2018 10:35:33 PM	مخول	مخول	عم	22/11/2018 10:35:33 PM	0101077861902018311988518
منطقة قفيا	مركز الدواهي	15/12/2018 02:46:15 PM	مخول	مخول	عم	15/12/2018 02:46:15 PM	0101077461902018311920784
منطقة قفيا	مركز الدواهي	20/12/2018 07:59:20 PM	مخول	مخول	عم	20/12/2018 07:59:20 PM	0101077461902018312611208
منطقة قفيا	مركز الدواهي	01/09/2018 12:55:01 PM	مخول	مخول	عم	01/09/2018 12:55:01 PM	0101077461902018308069912
منطقة قفيا	مركز الدواهي	21/12/2018 10:27:19 PM	مخول	مخول	عم	21/12/2018 10:27:19 PM	0101077861902018312420785
منطقة قفيا	مركز الدواهي	21/12/2018 10:27:19 PM	مخول	مخول	عم	21/12/2018 10:27:19 PM	0101077861902018312420845
منطقة قفيا	مركز الدواهي	16/08/2018 09:27:45 AM	مخول	مخول	عم	16/08/2018 09:27:45 AM	0101077461902018308023278
منطقة قفيا	مركز الدواهي	16/08/2018 07:53:29 PM	مخول	مخول	عم	16/08/2018 07:53:29 PM	0101077461902018308038646
منطقة قفيا	مركز الدواهي	16/08/2018 12:53:02 AM	مخول	مخول	عم	16/08/2018 12:53:02 AM	0101077461902018308224629
منطقة قفيا	مركز الدواهي	09/12/2018 01:29:19 AM	مخول	مخول	عم	09/12/2018 01:29:19 AM	0101077861902018312088090
منطقة قفيا	مركز الدواهي	09/12/2018 01:39:19 AM	مخول	مخول	عم	09/12/2018 01:39:19 AM	0101077861902018312088517
منطقة قفيا	مركز الدواهي	29/11/2018 10:16:56 PM	مخول	مخول	عم	29/11/2018 10:16:56 PM	0101077461902018311759733
منطقة قفيا	مركز الدواهي	17/08/2018 05:57:13 PM	مخول	مخول	عم	17/08/2018 05:57:13 PM	0101077461902018308271425
منطقة قفيا	مركز الدواهي	31/08/2018 02:47:19 PM	مخول	مخول	عم	31/08/2018 02:47:19 PM	01010774619020183080560029
منطقة قفيا	مركز الدواهي	01/11/2018 10:05:21 PM	مخول	مخول	عم	01/11/2018 10:05:21 PM	0101077481902018310929937
منطقة قفيا	مركز الدواهي	23/10/2018 10:16:56 PM	مخول	مخول	عم	23/10/2018 10:16:56 PM	0101077461902018308056571
منطقة قفيا	مركز الدواهي	23/10/2018 10:16:56 PM	مخول	مخول	عم	23/10/2018 10:16:56 PM	



منفذ جوازات المملكة قفيا	03/09/2018 12:00:13 PM	خارج	عروج	عجلون	26/11/2018 12:48:24 PM	010107746190201831172809	عجلون	عمر
منفذ جوازات المملكة قفيا	03/09/2018 12:01:13 PM	خارج	عروج	عجلون	07/12/2018 10:51:43 AM	010107746190201831172809	عجلون	عمر
منفذ جوازات المملكة قفيا	14/12/2018 10:27:27 PM	خارج	عروج	عجلون	13/12/2018 10:58:56 AM	010107746190201831172809	عجلون	عمر
منفذ جوازات المملكة قفيا	20/07/2018 07:36:00 PM	داخل	عروج	عجلون	24/09/2018 09:25:57 AM	010107746190201831172809	عجلون	عمر
منفذ جوازات المملكة قفيا	29/08/2018 03:21:04 PM	داخل	عروج	عجلون	13/12/2018 07:39:32 AM	010107746190201831172809	عجلون	عمر
منفذ جوازات المملكة قفيا	20/12/2018 06:12:01 PM	داخل	عروج	عجلون	03/09/2018 06:15:50 PM	010107746190201831172809	عجلون	عمر
منفذ جوازات المملكة قفيا	20/12/2018 06:12:01 PM	داخل	عروج	عجلون	20/12/2018 12:18:43 AM	010107746190201831229973	عجلون	عمر
منفذ جوازات المملكة قفيا	20/12/2018 06:13:41 AM	داخل	عروج	عجلون	20/12/2018 06:13:41 AM	0101077461902018312398933	عجلون	عمر
منفذ جوازات المملكة قفيا	20/12/2018 06:57:21 PM	داخل	عروج	عجلون	21/11/2018 05:42:20 PM	010107746190201831128935	عجلون	عمر
منفذ جوازات المملكة قفيا	22/12/2018 08:34:42 PM	داخل	عروج	عجلون	18/12/2018 09:53:45 AM	0101077461902018312470797	عجلون	عمر
منفذ جوازات المملكة قفيا	22/08/2018 07:56:00 PM	داخل	عروج	عجلون	16/08/2018 11:32:17 AM	010107746190201830083887	عجلون	عمر
منفذ جوازات المملكة قفيا	14/12/2018 08:48:25 PM	داخل	عروج	عجلون	15/08/2018 11:44:45 PM	0101077461902018302824005	عجلون	عمر
منفذ جوازات المملكة قفيا	17/12/2018 10:00:23 AM	خارج	عروج	عجلون	05/12/2018 08:40:12 PM	0101077461902018312016232	عجلون	عمر
منفذ جوازات المملكة قفيا	13/12/2018 12:57:00 PM	خارج	عروج	عجلون	05/12/2018 09:21:02 AM	0101077491902018311968088	عجلون	عمر
منفذ جوازات المملكة قفيا	01/11/2018 07:39:35 PM	داخل	عروج	عجلون	12/12/2018 11:20:30 AM	0101077491902018312261708	عجلون	عمر
منفذ جوازات المملكة قفيا	01/11/2018 07:39:35 PM	داخل	عروج	عجلون	26/10/2018 06:21:46 AM	0101077461902018310852865	عجلون	عمر
منفذ جوازات المملكة قفيا	01/11/2018 07:39:35 PM	داخل	عروج	عجلون	14/12/2018 11:19:29 AM	0101077491902018312351741	عجلون	عمر
منفذ جوازات المملكة قفيا	01/11/2018 07:39:35 PM	داخل	عروج	عجلون	15/12/2018 02:46:15 PM	0101077481902018311919423	عجلون	عمر
منفذ جوازات المملكة قفيا	01/11/2018 07:39:35 PM	داخل	عروج	عجلون	21/11/2018 05:52:21 PM	0101077461902018311581488	عجلون	عمر
منفذ جوازات المملكة قفيا	27/09/2018 05:56:18 PM	داخل	عروج	عجلون	29/07/2018 08:45:36 AM	0101077461902018300760094	عجلون	عمر
منفذ جوازات المملكة قفيا	08/12/2018 02:45:26 PM	خارج	عروج	عجلون	14/09/2018 11:51:08 PM	01010774619020183009122093	عجلون	عمر
منفذ جوازات المملكة قفيا	15/12/2018 01:21:39 PM	خارج	عروج	عجلون	07/12/2018 12:13:22 AM	0101077491902018312073751	عجلون	عمر
منفذ جوازات المملكة قفيا	14/12/2018 09:40:00 AM	خارج	عروج	عجلون	12/12/2018 12:44:40 PM	010107749190201831232607	عجلون	عمر
منفذ جوازات المملكة قفيا	17/09/2018 07:41:00 PM	داخل	عروج	عجلون	03/12/2018 10:15:00 PM	0101077491902018311926461	عجلون	عمر
منفذ جوازات المملكة قفيا	06/09/2018 07:15:47 PM	داخل	عروج	عجلون	21/12/2018 10:28:19 PM	0101077491902018312618342	عجلون	عمر
منفذ جوازات المملكة قفيا	22/12/2018 05:27:57 PM	داخل	عروج	عجلون	13/09/2018 06:07:08 PM	010107748190201830904724	عجلون	عمر
منفذ جوازات المملكة قفيا	15/11/2018 07:51:42 PM	داخل	عروج	عجلون	09/07/2018 05:24:00 AM	0101077481902018306974236	عجلون	عمر
منفذ جوازات المملكة قفيا	14/12/2018 07:30:05 AM	خارج	عروج	عجلون	19/12/2018 12:17:46 PM	0101077461902018312537656	عجلون	عمر
منفذ جوازات المملكة قفيا	22/12/2018 09:46:44 AM	خارج	عروج	عجلون	07/11/2018 09:02:17 PM	010107748190201831128915	عجلون	عمر
منفذ جوازات المملكة قفيا	22/12/2018 09:46:44 AM	خارج	عروج	عجلون	28/09/2018 01:36:11 AM	010107746190201831068830	عجلون	عمر
منفذ جوازات المملكة قفيا	16/12/2018 07:00:32 PM	داخل	عروج	عجلون	12/12/2018 01:36:53 PM	0101077861902018312105049	عجلون	عمر
منفذ جوازات المملكة قفيا	16/12/2018 07:00:32 PM	داخل	عروج	عجلون	12/12/2018 11:06:28 AM	0101077861902018312195064	عجلون	عمر
منفذ جوازات المملكة قفيا	16/10/2018 01:39:00 PM	داخل	عروج	عجلون	16/12/2018 06:13:25 AM	0101077491902018312372441	عجلون	عمر
منفذ جوازات المملكة قفيا	12/11/2018 07:34:59 AM	داخل	عروج	عجلون	15/12/2018 06:44:56 PM	0101077461902018312366247	عجلون	عمر
منفذ جوازات المملكة قفيا	25/10/2018 09:38:49 AM	خارج	عروج	عجلون	07/10/2018 06:16:40 PM	0101077461902018309910231	عجلون	عمر
منفذ جوازات المملكة قفيا	14/12/2018 07:30:05 AM	خارج	عروج	عجلون	06/11/2018 12:55:46 PM	0101077461902018311058266	عجلون	عمر
منفذ جوازات المملكة قفيا	14/12/2018 07:30:05 AM	خارج	عروج	عجلون	16/12/2018 06:12:25 AM	0101077491902018312372739	عجلون	عمر
منفذ جوازات المملكة قفيا	23/12/2018 09:45:43 AM	خارج	عروج	عجلون	11/10/2018 11:34:57 PM	0101077491902018310117263	عجلون	عمر
منفذ جوازات المملكة قفيا	29/08/2018 01:19:03 PM	داخل	عروج	عجلون	12/12/2018 06:43:31 PM	010107749190201831236679	عجلون	عمر
منفذ جوازات المملكة قفيا	15/08/2018 09:48:47 AM	خارج	عروج	عجلون	27/11/2018 09:36:17 PM	0101077461902018311807907	عجلون	عمر
منفذ جوازات المملكة قفيا	05/09/2018 12:52:01 PM	خارج	عروج	عجلون	12/12/2018 01:45:54 PM	0101077491902018312272551	عجلون	عمر
منفذ جوازات المملكة قفيا	12/11/2018 09:40:39 AM	خارج	عروج	عجلون	28/08/2018 09:31:45 PM	0101077461902018308465238	عجلون	عمر
منفذ جوازات المملكة قفيا	18/12/2018 10:38:19 PM	داخل	عروج	عجلون	15/08/2018 11:15:27 AM	0101077491902018308119658	عجلون	عمر
منفذ جوازات المملكة قفيا	18/12/2018 10:38:19 PM	داخل	عروج	عجلون	03/09/2018 11:21:38 PM	0101077491902018308679069	عجلون	عمر
منفذ جوازات المملكة قفيا	18/12/2018 10:38:19 PM	داخل	عروج	عجلون	08/11/2018 03:55:01 PM	010107861902018310132087	عجلون	عمر
منفذ جوازات المملكة قفيا	18/12/2018 10:38:19 PM	داخل	عروج	عجلون	13/12/2018 04:41:13 AM	010107746190201831395248	عجلون	عمر
منفذ جوازات المملكة قفيا	18/12/2018 10:38:19 PM	داخل	عروج	عجلون	17/12/2018 08:59:53 PM	0101077481902018312457799	عجلون	عمر
منفذ جوازات المملكة قفيا	18/12/2018 10:38:19 PM	داخل	عروج	عجلون	13/12/2018 04:40:12 AM	010107746190201831209643	عجلون	عمر
منفذ جوازات المملكة قفيا	18/12/2018 10:38:19 PM	داخل	عروج	عجلون	18/12/2018 03:14:44 AM	010107748190201831247121	عجلون	عمر
منفذ جوازات المملكة قفيا	19/12/2018 05:31:27 PM	داخل	عروج	عجلون	09/12/2018 02:51:27 AM	0101077481902018312101974	عجلون	عمر
منفذ جوازات المملكة قفيا	16/08/2018 12:36:32 AM	داخل	عروج	عجلون	25/07/2018 09:03:50 PM	0101077461902018307542447	عجلون	عمر
منفذ جوازات المملكة قفيا	01/12/2018 03:36:21 PM	داخل	عروج	عجلون	28/11/2018 12:30:43 PM	0101077461902018311828833	عجلون	عمر
منفذ جوازات المملكة قفيا	29/11/2018 09:12:11 PM	داخل	عروج	عجلون	29/11/2018 03:25:59 PM	010107746190201831159076	عجلون	عمر
منفذ جوازات المملكة قفيا	20/12/2018 06:12:37 PM	داخل	عروج	عجلون	03/09/2018 06:00:46 AM	0101077481902018308664188	عجلون	عمر
منفذ جوازات المملكة قفيا	20/12/2018 06:12:37 PM	داخل	عروج	عجلون	20/12/2018 12:18:43 AM	010107746190201831229974	عجلون	عمر
منفذ جوازات المملكة قفيا	13/08/2018 08:39:57 AM	خارج	عروج	عجلون	10/08/2018 01:50:41 PM	0101077491902018308009150	عجلون	عمر
منفذ جوازات المملكة قفيا	16/09/2018 09:55:23 PM	داخل	عروج	عجلون	22/08/2018 06:43:36 AM	0101077461902018308039622	عجلون	عمر
منفذ جوازات المملكة قفيا	22/08/2018 09:56:02 PM	داخل	عروج	عجلون	12/08/2018 09:28:27 PM	0101077461902018300875083	عجلون	عمر
منفذ جوازات المملكة قفيا	20/12/2018 06:34:09 PM	داخل	عروج	عجلون	18/12/2018 03:21:29 AM	010107746190201831149519	عجلون	عمر
منفذ جوازات المملكة قفيا	14/12/2018 02:57:12 PM	خارج	عروج	عجلون	21/11/2018 05:48:20 PM	0101077861902018311562916	عجلون	عمر
منفذ جوازات المملكة قفيا	17/11/2018 10:40:30 AM	خارج	عروج	عجلون	10/12/2018 04:40:00 PM	0101077491902018312177428	عجلون	عمر
منفذ جوازات المملكة قفيا	23/12/2018 10:40:30 AM	خارج	عروج	عجلون	17/11/2018 06:35:12 PM	010107786190201831179629	عجلون	عمر
منفذ جوازات المملكة قفيا	16/12/2018 06:44:42 PM	داخل	عروج	عجلون	20/11/2018 04:28:37 PM	0101077861902018311562314	عجلون	عمر
منفذ جوازات المملكة قفيا	19/12/2018 03:08:00 PM	خارج	عروج	عجلون	15/12/2018 03:06:23 PM	0101077461902018312362084	عجلون	عمر
منفذ جوازات المملكة قفيا	18/08/2018 09:44:48 AM	خارج	عروج	عجلون	02/11/2018 03:58:06 AM	0101077491902018310932467	عجلون	عمر
منفذ جوازات المملكة قفيا	07/11/2018 06:05:42 PM	خارج	عروج	عجلون	11/08/2018 11:08:08 PM	0101077491902018308301072	عجلون	عمر
منفذ جوازات المملكة قفيا	22/11/2018 06:05:56 PM	خارج	عروج	عجلون	07/11/2018 02:13:42 AM	0101077461902018311092779	عجلون	عمر
منفذ جوازات المملكة قفيا	14/08/2018 08:21:05 PM	خارج	عروج	عجلون	04/11/2018 06:25:27 PM	0101077491902018310989443	عجلون	عمر
منفذ جوازات المملكة قفيا	06/12/2018 07:32:00 PM	داخل	عروج	عجلون	12/08/2018 09:15:29 AM	0101077461902018308039487	عجلون	عمر
منفذ جوازات المملكة قفيا	06/12/2018 07:32:00 PM	داخل	عروج	عجلون	02/11/2018 03:55:05 AM	010107748190201830923478	عجلون	عمر
منفذ جوازات المملكة قفيا	19/08/2018 07:22:12 AM	خارج	عروج	عجلون	10/11/2018 02:31:17 PM	0101077481902018311094410	عجلون	عمر
منفذ جوازات المملكة قفيا	24/10/2018 08:07:00 PM	داخل	عروج	عجلون	16/08/2018 04:06:07 PM	0101077491902018308256676	عجلون	عمر
منفذ جوازات المملكة قفيا	24/10/2018 08:07:00 PM	داخل	عروج	عجلون	09/12/2018 09:34:42 PM	0101077481902018312136094	عجلون	عمر
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منفذ جوازات المملكة قفيا	24/10/2018 08:07:00 PM	داخل	عروج	عجلون	09/07/2018 06:28:47 PM	0101077481902018308700896	عجلون	عمر
منفذ جوازات المملكة قفيا	24/10/2018 08:07:00 PM	داخل	عروج	عجلون	11/10/2018 07:50:22 PM	010107746190201831032920	عجلون	عمر
منفذ جوازات المملكة قفيا	24/10/2018 08:07:00 PM	داخل	عروج	عجلون	23/09/2018 09:31:24 PM	0101077491902018309766489	عجلون	عمر
منفذ جوازات المملكة قفيا	24/10/2018 08:07:00 PM	داخل	عروج	عجلون	05/10/2018 11:13:55 PM	0101077461902018309051889	عجلون	عمر
منفذ جوازات المملكة قفيا	27/09/2018 09:23:22 PM	داخل	عروج	عجلون	21/09/2018 02:53:59 PM	0101077461902018309231313	عجلون	عمر
منفذ جوازات المملكة قفيا	16/12/2018 06:44:11 PM	داخل	عروج	عجلون	23/12/2018 05:32:24 AM	0101077461902018312641537	عجلون	عمر
منفذ جوازات المملكة قفيا	16/12/2018 06:44:11 PM	داخل	عروج	عجلون	17/12/2018 03:47:56 AM	0101077491902018312421138	عجلون	عمر
منفذ جوازات المملكة قفيا	24/10/2018 08:07:00 PM	داخل	عروج	عجلون	15/12/2018 06:44:56 PM	0101077461902018312366225	عجلون	عمر
منفذ جوازات المملكة قفيا	24/10/2018 08:07:00 PM	داخل	عروج	عجلون	16/10/2018 06:37:41 AM	0101077461902018310200026	عجلون	عمر

منفذ جوازات المملكة قفيا	26/11/2018 12:48:24 PM	داخل	عروج	عجلون	26/11/2018 12:48:24 PM	010107746190201831172809	عجلون	عمر
منفذ جوازات المملكة قفيا	07/12/2018 10:51:43 AM	داخل	عروج	عجلون	07/12/2018 10:51:43 AM	010107746190201831172809	عجلون	عمر
منفذ جوازات المملكة قفيا	22/12/2018 10:51:43 AM	داخل	عروج	عجلون	22/12/2018 10:51:43 AM	010107746190201831172809	عجلون	عمر
منفذ جوازات المملكة قفيا	23/09/2018 06:24:54 PM	داخل	عروج	عجلون	23/09/2018 06:24:54 PM	0101077461902018309382041	عجلون	عمر
منفذ جوازات المملكة قفيا	09/12/2018 01:04:34 PM	داخل	عروج	عجلون	09/12/2018 01:04:34 PM	0101077491902018311979129	عجلون	عمر
منفذ جوازات المملكة قفيا	27/10/2018 07:21:21 PM	داخل	عروج	عجلون	27/10/2018 07:21:21 PM	0101077461902018310677729	عجلون	عمر
منفذ جوازات المملكة قفيا	13/11/2018 13:29:51 AM	داخل	عروج	عجلون	13/11/2018 13:29:51 AM	0101077461902018311208180	عجلون	عمر
منفذ جوازات المملكة قفيا	15/11/2018 05:12:49 PM	داخل	عروج	عجلون	15/11/2018 05:12:49 PM	0101077491902018311412723	عجلون	عمر
منفذ جوازات المملكة قفيا	15							



مركز هوزات حبرانية	21/09/2018 03:16:07 PM	سجون	سجون	عم	06/10/2018 01:46:39 AM	010107746190201830905745
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مركز هوزات حبرانية	28/09/2018 10:20:46 AM	سجون	سجون	✓	17/09/2018 10:55:05 AM	0101077461902018309134875
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مركز هوزات حبرانية	30/10/2018 10:06:00 AM	سجون	سجون	✓	17/09/2018 05:59:29 PM	0101077461902018309162113
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مركز هوزات حبرانية		سجون	سجون	✓	19/09/2018 07:46:47 PM	0101077461902018320526876
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مركز هوزات حبرانية		سجون	سجون	✓	16/12/2018 10:59:17 AM	0101077461902018311923031
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مركز هوزات حبرانية		سجون	سجون	✓	08/10/2018 06:10:27 AM	0101077461902018309843187
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06/12/2018	03:10:26 AM	مطار	مطار	010102758009201	8312025846
08/12/2018	10:50:55 AM	مطار	مطار	010102449009201	8312076738
08/12/2018	10:51:55 AM	مطار	مطار	010102449009201	8312076741
09/12/2018	04:13:43 AM	مطار	مطار	010102449009201	8312081024
09/12/2018	09:38:42 AM	مطار	مطار	010102449009201	8312078965
09/12/2018	09:38:45 AM	مطار	مطار	010102449009201	8312079139
10/12/2018	10:37:56 AM	مطار	مطار	010102449009201	8312148047
10/12/2018	10:32:03 PM	مطار	مطار	010102449009201	8312191800
10/12/2018	10:42:03 PM	مطار	مطار	010102449009201	8312181510
10/12/2018	10:48:01 PM	مطار	مطار	010102449009201	8311319986
11/12/2018	03:16:42 AM	مطار	مطار	010102449009201	8312199138
11/12/2018	03:17:42 AM	مطار	مطار	010102449009201	8312198434
11/12/2018	12:05:15 PM	مطار	مطار	010102758009201	8311936272
11/12/2018	09:55:47 PM	مطار	مطار	010102449009201	8312128010
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12/12/2018	11:06:28 AM	مطار	مطار	010102449009201	8312196854
12/12/2018	08:45:58 PM	مطار	مطار	010102449009201	8311994190
13/12/2018	05:39:45 PM	مطار	مطار	010102758009201	8312326241
14/12/2018	03:17:20 AM	مطار	مطار	010102449009201	8312306001
14/12/2018	05:19:24 PM	مطار	مطار	010102449009201	8312350040
15/12/2018	02:41:13 PM	مطار	مطار	010102449009201	8312077884
15/12/2018	02:41:13 PM	مطار	مطار	010102449009201	8312077997
16/12/2018	06:18:26 AM	مطار	مطار	010102758009201	8312351916
16/12/2018	04:17:41 PM	مطار	مطار	010102449009201	8312376066
17/12/2018	12:11:20 AM	مطار	مطار	010102449009201	8312323866
17/12/2018	07:32:35 AM	مطار	مطار	010102449009201	8312198232
17/12/2018	07:32:35 AM	مطار	مطار	010102449009201	8312198105
17/12/2018	10:12:57 PM	مطار	مطار	010102758009201	8312366576
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20/12/2018	07:10:09 PM	مطار	مطار	010102449009201	8312359513
21/12/2018	05:14:19 PM	مطار	مطار	010102449009201	8312471329
22/12/2018	12:15:17 AM	مطار	مطار	010102449009201	8311525823
22/12/2018	12:15:18 AM	مطار	مطار	010102449009201	8311523441
22/12/2018	04:02:40 AM	مطار	مطار	010102449009201	8312619833



## **Annex 17.D**

Qatari nationals residing in the United Arab Emirates and holding a UAE identification document (English translation of relevant parts of Arabic original)



## [Excel Redacted] Holders of UAE Resident Permits

FEDERAL AUTHORITY FOR IDENTITY AND CITIZENSHIP

<b>UNIFIED NUMBER</b>	<b>NAME</b>	<b>Movement</b>	<b>Date</b>	<b>Identification Document Number</b>	<b>Port</b>
[This column includes the given numbers]  <b>Number Redacted</b>	[This column includes the name of the Qatari nationals who were given a permit to enter the country]  <b>Name Redacted</b>	[Entry or Exit]	[the date of the movement]	[the Number of ID]  <b>Number Redacted</b>	[The port name whether it is Abu Dhabi International Airport, Abu Dhabi Airport, Ghuwaifat, Al-Mudeef Port, Dubai International Airport, Al-Sharjah International Airport, Khatmat Malaha port, Shaklah port, Hatta border Cross, or Hili Port]















## **Annex 18**

“Qatar: Hotline for mixed-families a face-saving act”, *Al Jazeera*, 11 June 2017



NEWS / QATAR

## Qatar: Hotline for mixed-families a face-saving act

*Rights group calls hotline set up by Saudi, UAE and Bahrain to help mixed-citizenship families a 'face-saving' exercise.*

11 Jun 2017

Qatar's National Human Rights Committee has dismissed a move by three Gulf Arab states, Saudi Arabia, United Arab Emirates (UAE) and Bahrain, to assist mixed-citizenship families who face the prospect of being split up, as "little more than a face-saving" exercise.

The NHRC said in a statement on Sunday that a hotline set up by Saudi Arabia, the UAE and Bahrain to assist mixed Qatari families who faced the prospect of deportation and expulsion was "too vague to have any practical impact" and was "void of a mechanism to be of assistance to those affected."

"The directives provide no solution to the serious legal and human rights issues that have resulted from the arbitrary measures imposed by Saudi Arabia, the UAE and Bahrain on the State of Qatar, which are in violation of all humanitarian norms, charters and principles, and constitute international human rights crimes." The statement said.

Saudi Arabia, the United Arab Emirates and Bahrain, which have cut ties with Qatar, announced via state media on Sunday the creation of hotlines to help families with Qatari members.

The statements carried by their official news agencies did not specify what services the hotline would provide.

On Monday, the three countries severed diplomatic ties with Qatar and shortly after ordered Qatari nationals to leave within 14 days.

Saudi, UAE and Bahraini citizens were also given the same timeframe to leave Qatar.

As a result, hundreds of mixed-citizenship Qatari couples are facing the grim prospect of being split from their families.

Qatari officials have repeatedly stated that the ultimatum issued by Saudi Arabia, UAE and Bahrain for Qatari citizens to leave was a violation of human rights that required UN intervention.

"The siege of Qatar is not only a gross violation of the rights of Gulf citizens (both Qatari and non-Qatari), but also the rights of expat residents in the State of Qatar," the NHRC said in the statement.

"The blockade of Qatar has trampled over a wide range of civil, economic social and cultural rights. The right to movement and residence, the right to private property, freedom of opinion and expression, the right to religious freedom, the right to work, the right to education, and the right to health have all been seriously damaged.

"Families have been split apart, livelihoods are being lost, and the academic prospects of students are being destroyed.

Amnesty International has also slammed the decision accusing the Gulf states of toying with the lives of thousands of people in their dispute with Qatar.

"For potentially thousands of people across the Gulf, the effect of the steps imposed in the wake of this political dispute is suffering, heartbreak and fear," James Lynch, the deputy director of Amnesty International's Global Issues Programme said.

**SOURCE: AL JAZEERA NEWS**

## **Annex 19**

“UAE continues to violate ICJ decision”, *Qatar Tribune*, 24 January 2019

## **‘UAE continues to violate ICJ decision’**

The report will be sent to more than 400 international organisations and entities, led by the Secretary-General of the United Nations, the United Nations High Commissioner for Human Rights, the International Court of Justice and the Committee on the Elimination of Racial Discrimination.

Following its examination of the UAE violations of the ICJ’s decision, the NHRC reached the following conclusions:

The continued violation of the rights of women, children, persons with disabilities and the elderly;

The continued denial of access to justice and the exercise of their right of access to courts and tribunals;

The law of criminalisation of sympathy issued by the UAE authorities on June 7, 2017, which stipulates that sympathy with Qatar is a punishable offence, impede the implementation of this right; Human rights violations continue due to measures taken by the UAE, and only a very small number of cases have been resolved; The UAE did not establish a clear mechanism for the implementation of the ICJ’s decision, which can be resorted to by the victims and the settlement of their situation, as well as the establishment of hotlines for this purpose.

The NHRC has recommended that the UAE side cooperate to establish a joint mechanism to implement the decision of the International Court of Justice and to monitor all violations after these decisions and provide the ICJ with reports on the subject.

The NHRC has therefore recommended that the UAE immediately comply with the implementation of the ICJ decision and establish a clear and transparent joint review mechanism for all persons affected by the arbitrary measures it has taken, and to report its implementation to the ICJ.

## **Annex 20**

*State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, *Note Verbale* from the Secretary-General of the United Nations (High Commissioner for Human Rights) to the Permanent Representative of the United Arab Emirates to the United Nations Office at Geneva, 7 May 2018, transmitting Qatar's Communication Submitted Pursuant to Article 11 of the International Convention on the Elimination of all Forms of Racial Discrimination, 8 March 2018



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REFERENCE: ICERD-ISC 2018/2  
CE/VI/mg

The Secretary-General of the United Nations (High Commissioner for Human Rights), presents his compliments to the Permanent Representative of the United Arab Emirates to the United Nations Office at Geneva, and has the honour to inform the State party of a decision adopted by the Committee on the Elimination of Racial Discrimination on 4 May 2018, in Geneva at its 2633<sup>th</sup> meeting, during its 95th session:

“The Committee on the Elimination of Racial Discrimination

Acting under Article 11 of the International Convention on the Elimination of all Forms of Racial Discrimination,

Having received on 8 March 2018 an inter-State communication submitted by Qatar against the United Arab Emirates, both States parties to that Convention,

Without considering the substance of that communication as required by Article 69, para 1, of the Rules of Procedure,

Decides:

1. To request the Secretary-General of the United Nations to transmit the communication to the State Party concerned, the United Arab Emirates;
2. To invite the United Arab Emirates to submit to the Committee; within three months, “written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State”, as provided for by Article 11, para 1, of the said Convention.”

The Secretary-General has the honour to transmit herewith the communication submitted by the State of Qatar, dated 8 March 2018. In accordance with the Committee’s decision, the State party is invited to submit its explanations or statements clarifying the matter and the remedy, if any, that may have been taken by the State party. The explanations or statements should reach the Committee in care of the Office of the High Commissioner for Human Rights, United Nations Office at Geneva, not later than 7 August 2018.

NATIONS UNIES  
DROITS DE L'HOMME  
HAUT-COMMISSARIAT



UNITED NATIONS  
HUMAN RIGHTS  
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The Secretary-General avails himself of this opportunity to renew to the Permanent Representative of the United Arab Emirates the assurances of his highest consideration.

 7 May 2018

**THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION**

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State of Qatar,

*Complainant,*

v.

United Arab Emirates,

*Respondent.*

---

**COMMUNICATION SUBMITTED PURSUANT TO ARTICLE 11 OF THE  
INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF  
RACIAL DISCRIMINATION**

---

8 March 2018

## TABLE OF CONTENTS

	Page
I. INTRODUCTION .....	1
II. FACTS UNDERLYING THIS COMMUNICATION .....	4
A. Implementation of the Coercive Measures Against Qatar .....	4
B. Closure of Air, Land, and Sea Borders and Collective Expulsion.....	12
C. Criminalization of “Sympathy” for Qatar and Incitement of Hate Speech .....	16
D. Effects of the Coercive Measures .....	19
1. Disruption of Family Unity.....	19
2. Interference with Medical Treatment.....	21
3. Interference with Education .....	21
4. Other Effects .....	23
E. International Condemnation of UAE’s Actions and Qatar’s Response.....	24
III. UAE’S VIOLATIONS OF THE CERD .....	25
A. General Framework: Prohibition on Racial Discrimination .....	26
B. Collective Expulsion.....	28
1. Prohibition on Collective Expulsion.....	28
2. UAE’s Violations of the Prohibition on Collective Expulsion.....	32
C. Discriminatory Interference with Protected Rights .....	33
1. Obligation to Guarantee the Right of Equality before the Law in the Enjoyment of Rights .....	33
2. UAE’s Discriminatory Interference with Protected Rights .....	34
a. Violations of the Right to Marriage and Choice of Spouse .....	34
b. Violations of the Right to Freedom of Opinion and Expression.....	37
c. Violations of the Right to Public Health and Medical Care .....	40
d. Violations of the Right to Education .....	41
e. Violations of the Right to Work.....	42
f. Violations of the Right to Property.....	43
g. Violations of the Right to Equal Treatment Before Tribunals .....	46
D. Inciting Racial Hatred .....	47
1. Obligation to Condemn Racial Hatred and Incitement.....	47
2. UAE’s Incitement of Racial Hatred and Failure to Condemn Racial Hatred.....	48

**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
E. Denial of Effective Protection and Remedies Against Acts of Racial Discrimination.....	50
1. Obligation to Assure Effective Protection and Remedies Against Acts of Racial Discrimination.....	50
2. UAE’s Failure to Assure Effective Protection and Remedies Against Acts of Racial Discrimination .....	50
IV. PRAYER FOR RELIEF .....	51

1. The State of Qatar (“Qatar”) submits this Communication regarding the United Arab Emirates (“UAE”) to the Committee on the Elimination of Racial Discrimination (the “Committee”) pursuant to Article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination (the “CERD” or the “Convention”), which entered into force on 4 January 1969.
2. Qatar and UAE are both States Parties to the CERD. Qatar acceded to the CERD on 22 July 1976 and UAE on 20 June 1974, and neither party has entered any pertinent reservations. Qatar hereby invokes the authority of the Committee to receive and transmit this Communication to UAE based on UAE’s failure to give effect to the provisions of the CERD.

#### **I. INTRODUCTION**

3. On 5 June 2017, the government of UAE, in coordination with the Kingdom of Saudi Arabia (“KSA”), the Kingdom of Bahrain (“Bahrain”), and the Arab Republic of Egypt (“Egypt”) (the “Four States”), announced a campaign of unlawful political isolation and economic coercion aimed at undermining the sovereignty of Qatar, including but not limited to their unjustified closure of all borders and access points by both air and sea to Qatar. As part of this campaign, UAE enacted and implemented discriminatory policies directed at Qatari citizens and companies on the sole basis of their Qatari nationality in violation of the CERD (the “Coercive Measures”). UAE’s Coercive Measures remain in effect to this day.
4. In particular, UAE has expelled all Qatari residents and visitors within its borders; has demanded the return of its nationals living in Qatar; has closed all borders and prohibited all inter-state transport; has banned any speech perceived to be in support of Qatar or opposed to the actions taken against Qatar on threat of severe financial penalty or incarceration; has frozen bank accounts of Qatari citizens; has sponsored a defamatory media campaign aimed at branding Qatar a rogue, extremist State; has blocked the access of its nationals to Qatari media; and has otherwise endeavored to sever all personal and professional relationships between Qatar’s citizens and other States. UAE took these actions without any justification under international law, and in particular, without

exception, without reference to individual circumstances, without a hearing, and without any consideration of whether those actions were legitimate, necessary, or proportionate.<sup>1</sup>

5. In so acting, UAE has attempted to delegitimize and destabilize the Qatari government. However, much of the impact of the Coercive Measures has been shouldered by Qatari citizens, who have been suffering severe and, in many cases, irreversible human rights abuses, particularly since June 2017.
6. The devastating harm caused by UAE's actions remains ongoing, and there is no sign of abatement. Families have been torn apart, livelihoods lost, and Qataris (not to mention Emirati nationals and others in the Gulf region) are being subjected to ongoing and daily violations of their fundamental rights. All good-faith efforts by Qatar and other members of the international community to broker a resolution have failed. Instead, UAE remains stubbornly and ruthlessly resolute, demanding that Qatar accede to a list of unreasonable demands that threaten Qatar's very sovereignty as a condition precedent to negotiating the resolution of a conflict UAE created.
7. In its assessment of the impact of the Coercive Measures, the UN Office of the High Commissioner for Human Rights ("OHCHR"), after conducting extensive in-country interviews, published a report in December 2017 which found that:

[The Coercive Measures], consisting of severe restrictions of movement, termination and disruption of trade, financial and investment flows, as well as suspension of social and cultural exchanges imposed on the State of Qatar, had immediately translated into actions applying to nationals and residents of Qatar, including citizens of KSA, UAE and Bahrain. Many of these measures have a potentially durable effect on the enjoyment of the human rights and fundamental freedoms of those affected. As there is no evidence of any legal decisions motivating these various measures, and due to the lack of any legal recourse for most individuals concerned, these measures can be considered as arbitrary. These actions were exacerbated by various and widespread forms of media defamation and campaigns hated [sic] against Qatar, its leadership and people.

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<sup>1</sup> See, e.g., Richard A. Falk, *A Normative Evaluation of the Gulf Crisis*, Humanitarian Studies Foundation Policy Brief (Feb. 2018), at 7-8.

The majority of the measures were broad and non-targeted, making no distinction between the Government of Qatar and its population. In that sense, they constitute core elements of the definition of unilateral coercive measures as proposed by the Human Rights Council Advisory Committee: 'the use of economic, trade or other measures taken by a State, group of States or international organizations acting autonomously to compel a change of policy of another State or to pressure individuals, groups or entities in targeted States to influence a course of action without the authorization of the Security Council.' Moreover, measures targeting individuals on the basis of their Qatari nationality or their links with Qatar can be qualified as non-disproportionate and discriminatory.

[...]

The majority of cases remain unresolved and are likely to durably affect the victims, particularly those having experienced family separation, loss of employment or who have been barred from access to their assets.<sup>2</sup>

8. After nearly ten months of enduring the Coercive Measures, and with no end in sight, Qatar is now compelled to seek the assistance and intervention of this Committee. While Qatar has taken steps towards mitigating the impact of UAE's discriminatory conduct, the violations of the human rights of Qatari citizenry continue, and Qatar must therefore call upon this Committee for assistance with respect to UAE abiding by its international obligations to Qatar, and, indeed, to its own citizens. The enactment and encouragement of arbitrary, disproportionate, and discriminatory practices against Qatari, Emirati, and other Gulf State nationals clearly and egregiously violates the Convention, as discussed in detail in this Communication.
9. Qatar submits this Communication without prejudice to its right to supplement and amend its content over the course of this proceeding.

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<sup>2</sup> OHCHR Technical Mission to the State of Qatar, 17-24 November 2017, Report on the impact of the Gulf Crisis on Human Rights (Dec. 2017), paras. 60-64 (hereinafter "OHCHR Report").

## II. FACTS UNDERLYING THIS COMMUNICATION

### A. Implementation of the Coercive Measures Against Qatar

10. The governments of UAE and the other States have engaged in a campaign of political isolation and economic coercion aimed at undermining the sovereignty of Qatar by implementing policies that discriminate against Qatari citizens and companies on the sole basis of their Qatari nationality. The enactment and encouragement of arbitrary, disproportionate, and collective discriminatory practices against Qatari nationals plainly violates applicable provisions of the Convention. Routine political and diplomatic disagreements between the sovereign States of the Gulf region are beyond the scope of this Communication, which instead focuses narrowly on the conduct of UAE that has resulted in express violations of the Convention.
11. Beginning in early 2017, reports and commentary hostile to Qatar and orchestrated by the Four States began to appear in prominent media outlets. Although this activity set the stage for what was to follow, the incitement and implementation of the Coercive Measures can be most immediately traced to events of 23 May 2017, when Qatari media websites fell victim to a cyberattack. Hackers posted fake news stories claiming that Qatar's Emir, His Highness Sheikh Tamim bin Hamad al-Thani, had made statements supporting Iran as an "Islamic power" and criticizing United States ("U.S.") President Donald Trump while speaking at a graduation ceremony for National Service recruits.<sup>3</sup> These fabricated statements were published on the Qatar News Agency website.<sup>4</sup> Qatar immediately and unequivocally disavowed these false comments as having been planted on its news site by hackers, called the clandestine operation an act of "cyber terrorism," and maintained that it "represents a clear violation and breach of international law and of the bilateral and collective agreements signed between the member states of the Gulf Cooperation Council ("GCC"), as well as collective agreements with the Arab League, the Organization of

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<sup>3</sup> See William Maclean, *Gulf rift reopens as Qatar decries hacked comments by emir*, REUTERS (24 May 2017), <https://www.reuters.com/article/us-qatar-cyber/gulf-rift-reopens-as-qatar-decries-hacked-comments-by-emir-idUSKBN18K02Z>.

<sup>4</sup> See *id.*

Islamic Cooperation, and the United Nations.<sup>5</sup> International media sources revealed that, according to U.S. intelligence officials, UAE “orchestrated the hacking of Qatari government news and social media sites in order to post incendiary false quotes attributed to Qatar’s emir.”<sup>6</sup>

12. Despite Qatar’s denials and evidence that these statements were the product of criminal activity, UAE nonetheless seized upon the statements as a pretext for initiating a campaign to isolate Qatar, interfere in its internal affairs, and foment hostility against it and its nationals. UAE immediately blocked access, for instance, to at least eight news websites operated by Qatari entities, including the Al Jazeera Media Network (“Al Jazeera”).<sup>7</sup> Hundreds of editorials hostile towards Qatar began to appear throughout Gulf media, including prominent UAE outlets.<sup>8</sup>
13. Soon after this hostile escalation, UAE announced on 5 June 2017 that it was severing all diplomatic and consular ties with Qatar, and implementing a series of other Coercive Measures:

UAE affirms its complete commitment and support to the Gulf Cooperation Council and to the security and stability of the GCC States. Within this framework, and based on the insistence of the State of Qatar to continue to undermine the security and stability of the region and its failure to honour international commitments and agreements, it has been decided to take the following measures that are necessary for safeguarding the interests of the GCC States in general and those of the brotherly Qatari people in particular:

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<sup>5</sup> *Id.*; *UAE violated international law by hacking QNA website: Qatar*, GULF TIMES (17 July 2017), <http://www.gulf-times.com/story/556991/UAE-violated-international-law-by-hacking-QNA-webs>.

<sup>6</sup> Karen DeYoung and Ella Nakashima, *UAE Orchestrated Hacking of Qatari Government Sites, Sparking Regional Upheaval, According to U.S. Intelligence Officials*, THE WASHINGTON POST (16 July 2017), [https://www.washingtonpost.com/world/national-security/UAE-hacked-qatari-government-sites-sparking-regional-upheaval-according-to-us-intelligence-officials/2017/07/16/00c46e54-698f-11e7-8eb5-cbccc2e7bfbf\\_story.html?utm\\_term=.b15aa7794a54](https://www.washingtonpost.com/world/national-security/UAE-hacked-qatari-government-sites-sparking-regional-upheaval-according-to-us-intelligence-officials/2017/07/16/00c46e54-698f-11e7-8eb5-cbccc2e7bfbf_story.html?utm_term=.b15aa7794a54).

<sup>7</sup> *Saudi Arabia, UAE, Bahrain block Qatari news websites*, Committee to Protect Journalists (25 May 2017), <https://cpj.org/2017/05/Saudi-arabia-UAE-bahrain-block-qatari-news-website.php>.

<sup>8</sup> *See, e.g.*, Kristian Coates Ulrichsen, *What’s going on with Qatar?*, THE WASHINGTON POST (1 June 2017), [https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/01/whats-going-on-with-qatar/?utm\\_term=.9a4d95e090f1](https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/01/whats-going-on-with-qatar/?utm_term=.9a4d95e090f1); Ahmed Al Omran, *Gulf media unleashes war of words with Qatar*, FINANCIAL TIMES (3 Aug. 2017), <https://www.ft.com/content/36f8eeca-76d2-11e7-90e0-90a9d1bc9691>.

1-In support of the statements issued by the sisterly Kingdom of Bahrain and sisterly Kingdom of Saudi Arabia, the United Arab Emirates severs all relations with the State of Qatar, including breaking off diplomatic relations, and gives Qatari diplomats 48 hours to leave UAE.

2-Preventing Qatari nationals from entering UAE or crossing its points of entry, giving Qatari residents and visitors in UAE 14 days to leave the country for precautionary security reasons. UAE nationals are likewise banned from traveling to or staying in Qatar or transiting through its territories.

3-Closure of UAE airspace and seaports for all Qataris in 24 hours and banning all Qatari means of transportation, coming to or leaving UAE, from crossing, entering or leaving UAE territories, and taking all legal measures in collaboration with friendly countries and international companies with regards to Qataris using UAE airspace and territorial waters, from and to Qatar, for national security considerations.

UAE is taking these decisive measures as a result of the Qatari authorities' failure to abide by the Riyadh Agreement on returning GCC diplomats to Doha and its Complementary Arrangement in 2014, and Qatar's continued support, funding and hosting of terror groups, primarily Islamic Brotherhood, and its sustained endeavours to promote the ideologies of Daesh and Al Qaeda across its direct and indirect media.

While regretting the policies taken by the State of Qatar that sow seeds of sedition and discord among the region's countries, UAE affirms its full respect and appreciation for the brotherly Qatari people on account of the profound historical, religious and fraternal ties and kin relations binding UAE and Qatari peoples.<sup>9</sup>

14. Bahrain, Egypt, Yemen, and other nations announced similar suspensions that day and in the days that followed.<sup>10</sup>

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<sup>9</sup> *United Arab Emirates severs relations with Qatar*, Saudi Press Agency (5 June 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1637351>.

<sup>10</sup> *See, e.g., Bahrain severs relations with Qatar*, Saudi Press Agency (5 June 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1637356>; *Egypt Severs Diplomatic Relations with Qatar*, Saudi Press Agency (5 June 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1637371>; *Yemen severs relations with Qatar*, Saudi Press Agency (5 June 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1637361>; *Libya Severs Diplomatic Relations with Qatar*, Saudi Press Agency (5 June 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1637406>; *Mauritania Severs Diplomatic Relations*

15. In email correspondence only weeks before, published by *The Intercept*, Yousef al-Otaiba, UAE's ambassador to the U.S., candidly described to former U.S. diplomat Elliott Abrams what UAE had in mind: "conquering" Qatar "would be an easy lift" and would "solve everyone's problems. Literally."<sup>11</sup> Ambassador Otaiba then alluded to the efforts already undertaken in this regard by KSA: "And King Abdullah of Saudi came pretty close to doing something in Qatar a few months before he passed."<sup>12</sup>

16. As Qatar attempted to adjust to these alarming circumstances, UAE intensified its efforts. On 23 June 2017, UAE and the other States (through Kuwaiti mediators) issued a 13-point list of demands to Qatar as the price for ending the Coercive Measures. While UAE and the other nations claimed, without substantiation, that the Coercive Measures were motivated by their national security concerns, substantially all of their demands were unrelated to questions of security. The demands did, however, represent a direct and immediate threat to Qatar's sovereignty by attempting to dictate how Qatar conducts both international relations and its internal affairs, including calling for the curtailment of free speech within Qatar. In particular, UAE and the other States insisted that Qatar:

- Consent to "compliance audits" for ten years, including monthly "audits" for the first year;
- "Align" with the Gulf and Arab countries militarily, politically, socially, and economically;

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with Qatar, Saudi Press Agency (7 June 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1637919>; Comoros severs diplomatic relations with Qatar, Saudi Press Agency (7 June 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1638089>; Djibouti reduces its diplomatic representation with Qatar, Saudi Press Agency (8 June 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1638421>; Niger recalls Ambassador to Qatar, Saudi Press Agency (10 June 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1638877>.

<sup>11</sup> Olivia Alabaster, *Leaked UAE emails: Saudi Arabia came close to 'conquering' Qatar*, MIDDLE EAST EYE (14 Sept. 2017), <http://www.middleeasteye.net/news/Saudi-arabia-came-close-conquering-qatar-new-leaked-emails-show-1491607860>.

<sup>12</sup> Zaid Jilani and Ryan Grim, *Hacked emails show top UAE diplomat coordinating with pro-israel think tank against Iran*, *The Intercept* (3 June 2017), <https://theintercept.com/2017/06/03/hacked-emails-show-top-uae-diplomat-coordinating-with-pro-israel-neocon-think-tank-against-iran/>.

- Pay reparations and compensation for loss of life, and financial losses, allegedly caused by Qatar’s policies in recent years, in an amount to be determined “in coordination” with Qatar;
- Cease alleged contacts with political parties opposed to the governing regimes in the Four States, and make available all information relating to Qatar’s engagement with any such groups;
- Terminate the Turkish military presence in Qatar;
- Curb ties with Iran;
- Shutter Al Jazeera, all affiliate stations, and all other Qatar-funded news outlets; and
- Revise citizenship laws, in particular the practice of granting citizenship to nationals from the Four States who are “wanted” in those States, and revoke Qatari citizenship if that citizenship violates those States’ laws.<sup>13</sup>

17. In short, UAE’s ultimatum demanded that Qatar muzzle news outlets through which opinions sometimes critical of UAE were expressed; surrender diplomatic and strategic relationships by which Qatar maintained its sovereignty; accede to the interference of UAE in the internal affairs of Qatar, and pay undetermined reparations for unidentified harms. Such demands, rather than reflecting legitimate national security concerns, were in fact a naked attempt to suppress media freedoms and to coerce Qatar into toeing the line of the Four States. The Committee to Protect Journalists said so explicitly:

[T]he demand to shutter all Qatari-funded media—including the international network Al-Jazeera, [and] ... the news websites Al-Arabi Al-Jadeed, Middle East Eye, Arabi21, Egypt’s Rassd news agency, and others—shows clear contempt for the principle of press freedom and to [the Four States’] treaty commitments to the rights

<sup>13</sup> See *The 13 demands on Qatar from Saudi Arabia, Bahrain, UAE and Egypt*, THE NATIONAL (23 June 2017), <https://www.thenational.ae/world/the-13-demands-on-qatar-from-saudi-arabia-bahrain-the-uac-and-egypt-1.93329>; see also *‘Qatar given 10 days to meet 13 sweeping demands by Saudi Arabia*, THE GUARDIAN (23 June 2017), <https://www.theguardian.com/world/2017/jun/23/close-al-jazeera-saudi-arabia-issues-qatar-with-13-demands-to-end-blockade>.

Many of these demands were first articulated in the Riyadh Agreements of 2013 and 2014, the contents of which remained secret until around the time the Coercive Measures were first imposed. KSA and UAE now claim that Qatar’s violation of those Agreements was a reason for their imposition of the Coercive Measures. To the contrary, as Qatar has repeatedly stated, it is the conduct of KSA and UAE that violates the spirit of those Agreements, which are dedicated to regional cooperation. Jim Sciutto and Jeremy Herb, *Exclusive: The secret documents that help explain the Qatar crisis*, CNN (11 July 2017), <https://www.cnn.com/2017/07/10/politics/secret-documents-qatar-crisis-gulf-Saudi/index.html>.

to free expression and to freely receive and impart information. The demand also represents a clear attempt to interfere in the internal affairs of the countries where these media companies operate—under the guise of demanding that Qatar not interfere in other countries’ internal affairs, thereby limiting the diversity of sources for information and views in the region.<sup>14</sup>

18. Qatar was given ten days to respond, with a subsequently-granted 48-hour extension, which had been requested by the Emir of Kuwait.<sup>15</sup> UAE and the other States noted that their “reply w[ould] be sent after studying and evaluating the Qatari Government’s response to the complete list of demands.”<sup>16</sup>
19. On 5 July 2017, UAE and the other States repackaged their unacceptable demands in the form of six “broad principles” which they claimed were consistent with the nations’ international obligations.<sup>17</sup> These principles included a commitment to “[r]efrain from interfering in the internal affairs of States,” to comply with measures that UAE claimed to be necessary to combat extremism and terrorism, and to comply with the terms of the secret Riyadh Agreements of 2013 and 2014.<sup>18</sup> But as described herein, UAE’s allegations of Qatari support for terrorism—like the false news story planted on the Qatari news service and attributed to Qatar’s Emir—are unsupported pretext. Like the previous demands, these principles were a thinly-veiled attempt to cloak an assault on Qatar’s sovereignty in the language of diplomacy. UAE’s demand that Qatar refrain from “interfering in the internal affairs of States,” for-example, stood in obvious conflict with its non-negotiable demands

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<sup>14</sup> Joel Simon, *Calls to shutter Qatari media show contempt for press freedom*, Committee to Protect Journalists (28 June 2017), <https://cpj.org/2017/06/calls-to-shutter-qatari-media-show-contempt-for-pr.php>.

<sup>15</sup> *In response to Amir of Kuwait’s request, Saudi Arabia, UAE, Bahrain & Egypt agree to extend the grace period offered to Qatar to 48 hours*, Saudi Press Agency (3 July 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1644914>.

<sup>16</sup> Muzamil Bashir, *Saudi Arabia, UAE, Bahrain and Egypt accept Amir of Kuwait’s request to extend deadline for Qatar*, Emirates News Agency (3 July 2017), <http://wam.ae/en/details/1395302621328>.

<sup>17</sup> See READ, *Full joint statement of boycotting countries on Qatar crisis*, AL ARABIYA ENGLISH (5 July 2017), <http://english.alarabiya.net/en/News/gulf/2017/07/05/READ-Full-joint-statement-of-boycotting-countries-on-Qatar-crisis.html>.

<sup>18</sup> *Id.*

that Qatar conform its own internal affairs to the desires of UAE. Qatar refused to comply with the ultimatum.<sup>19</sup>

20. Qatar nonetheless has made several attempts to reach a diplomatic resolution of this conflict and has requested assistance from other states to this end. Initially, Qatar turned to the Kuwaiti Emir, His Highness Sheikh Sabah al-Ahmad al-Jaber al-Sabah, to act as a neutral mediator. The international community broadly supported Sheikh al-Sabah's involvement. Unfortunately, after three rounds of mediation, Kuwait was unable to broker a resolution.<sup>20</sup>
21. Soon thereafter, during a September 2017 joint press conference with the Kuwaiti Emir, U.S. President Trump offered his assistance.<sup>21</sup> He individually spoke with representatives of Qatar, UAE, and KSA; this led to a telephone conversation between Qatar's Emir, His Highness Sheikh Tamim bin Hamad al-Thani, and Crown Prince Mohammed bin Salman of KSA—their first conversation since the Coercive Measures were imposed.<sup>22</sup> Shortly after the call, KSA accused Qatar of not being “serious” about reaching a resolution, and announced that all communications between the countries would be suspended.<sup>23</sup> But in fact, observers have noted that Qatar clearly acted in good faith, and that at least one cause of KSA's accusation was frustration that Qatari media did not report that it was Qatar that initiated the phone call.<sup>24</sup>
22. During the following month, Kuwait resumed mediation efforts. In response to a call with Kuwaiti Emir al-Sabah, Qatar's foreign ministry issued a statement affirming its readiness

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<sup>19</sup> See *Sheikh Tamim: Any talks must respect Qatar sovereignty*, AL JAZEERA (22 July 2017), <http://www.aljazeera.com/news/2017/07/sheikh-tamim-talks-respect-qatar-sovereignty-170721184815998.html>.

<sup>20</sup> Ali Bakeer, *GCC crisis: Why is Kuwaiti mediation not working?*, AL JAZEERA (11 Aug. 2017), <http://www.aljazeera.com/indepth/opinion/2017/08/gcc-crisis-kuwaiti-mediation-working-170807093244546.html>.

<sup>21</sup> *Qatar crisis: Saudi Arabia angered after emir's phone call*, BBC NEWS (9 Sept. 2017), <http://www.bbc.com/news/world-middle-east-41209610>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* UAE's official news agency also reported similar accusations. See *UAE Press: Qatar has distorted details of phone call*, Emirates News Agency (11 Sept. 2017), <http://wam.ac/en/details/1395302631624>.

for dialogue and calling on its citizens and media outlets to refrain from retaliatory measures.<sup>25</sup> Qatar stated that it “hailed the appeal” made by the Kuwaiti Emir and that it did not seek to “escalate the situation.”<sup>26</sup> The statement underscored Qatar’s desire to foster dialogue based on mutual respect and its commitment to solidarity and friendship within the GCC.<sup>27</sup>

23. In December 2017, Qatar’s Deputy Prime Minister and Minister of Foreign Affairs, His Excellency Sheikh Mohammed bin Abdulrahman al Thani, again reiterated Qatar’s commitment to mediation, stating: “We hope that the Gulf crisis will be resolved within the framework of the GCC and under the auspices of the Kuwaiti mediation.” He emphasized that Qatar had no intention of internationalizing the crisis and that it remained focused on Kuwait’s mediation efforts.<sup>28</sup> In a demonstration of his serious intention to resolve the crisis through dialogue, the Emir of Qatar traveled to the GCC Summit. Qatar and Kuwait were, however, the only countries to send heads of state to attend the meeting; the leaders of UAE, KSA, Bahrain, and the Sultanate of Oman declined to attend and instead broke with long-standing custom by sending ministerial-level representatives.<sup>29</sup> And UAE took the occasion to announce the formation of a new political and military alliance with KSA, rather than to express its solidarity with the entire GCC.<sup>30</sup> The summit

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<sup>25</sup> *Qatar commits to Kuwait’s mediation on Gulf crisis*, AL JAZEERA (25 Oct. 2017), <http://www.aljazeera.com/news/2017/10/qatar-commits-kuwaiti-gcc-mediation-efforts-171025091527276.html>.

<sup>26</sup> *Id.*

<sup>27</sup> *Qatar Highly Appreciates HH the Emir of Kuwait’s Speech on Gulf Crisis*, QNA News (24 Oct. 2017), <https://news.qna.org.qa/lang/en/w/article/1508870115015409600>.

<sup>28</sup> *Hope GCC summit will help resolve crisis: FM*, QATAR TRIBUNE (4 Dec. 2017), <http://www.qatar-tribune.com/news-details/id/99605>.

<sup>29</sup> *See Ahmed Hagagy, Gulf rulers boycotting Qatar skip annual summit*, REUTERS (5 Dec. 2017), <https://www.reuters.com/article/us-gulf-qatar-summit/gulf-rulers-boycotting-qatar-skip-annual-summit-idUSKBN1DZ15U>.

<sup>30</sup> *See Patrick Wintour, UAE announces new Saudi alliance that could reshape Gulf relations*, THE GUARDIAN (5 Dec. 2017), <https://www.theguardian.com/world/2017/dec/05/UAE-Saudi-arabia-alliance-gulf-relations-gcc>.

was soon adjourned, after only two hours of discussion, although originally it was scheduled to last two days.<sup>31</sup>

24. Since the September phone call, there has been no contact between the leaders of Qatar and the other States. This remains the case despite the international community's continuing interest in resolving the dispute. Recent press reports, for instance, have stated that U.S. President Trump intends to meet with the leaders of KSA, UAE, and Qatar in March and April 2018 to discuss resolution of the Coercive Measures prior to the anticipated GCC Summit in Washington, D.C.<sup>32</sup>
25. UAE has stated that even in the face of this presidential initiative, however, it has no intention of ending the Coercive Measures: "Each of the quartet's 13 demands are non-negotiable and non-divisible and are the bare minimum required to return once more to normalcy between neighbours."<sup>33</sup> Qatar's many good faith efforts to reach a diplomatic resolution of this crisis have been repeatedly rebuffed, the hostile measures of the Four States remain unchecked, and the violation of the human rights of Qatari citizens grows ever more aggravated by the day.<sup>34</sup>

#### **B. Closure of Air, Land, and Sea Borders and Collective Expulsion**

26. The Coercive Measures were implemented without warning and with calculated and brutal force. On 5 June 2017, UAE withdrew its ambassador from Qatar and instructed its citizens

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<sup>31</sup> See Jon Gambrell, *Two-day Gulf summit ends within hours amid Qatar crisis*, FOX BUSINESS (5 Dec. 2017), <http://www.foxbusiness.com/markets/two-day-gulf-summit-ends-within-hours-amid-qatar-crisis>.

<sup>32</sup> See, e.g., Jonathan Swan, *Trump to host Arab leaders for sensitive talks*, AXIOS (24 Feb. 2018), <https://www.axios.com/trump-arab-leaders-sensitive-talks-33073439-1f4c-4ce9-bd14-1d81745a693a.html>.

<sup>33</sup> Esraa Ismail and Chris Moran, *UAE Press: Qatar has distorted details of phone call*, Emirates News Agency (11 Sept. 2017), <http://wam.ae/en/details/1395302631624>. Despite its apparently resolute focus on the 13 demands, statements and conduct by UAE officials betray another motive behind the Coercive Measures. A UAE official has been quoted as saying that the Coercive Measures will not be lifted until Qatar agrees to give up hosting the 2022 FIFA World Cup, see *UAE official urges Qatar to give up World Cup to end crisis*, FOX NEWS (9 Oct. 2017), <http://www.foxnews.com/world/2017/10/09/uae-official-urges-qatar-to-give-up-world-cup-to-end-crisis.html>, and a financial plan designed to force Qatar to pass the World Cup to another Gulf State was leaked in November 2017, see *Leaked Documents Expose Stunning Plan to Wage Financial War on Qatar – and Steal the World Cup*, The Intercept (9 Nov. 2017), <https://theintercept.com/2017/11/09/uae-qatar-oitaba-rowland-banque-havilland-world-cup/>.

<sup>34</sup> See generally OHCHR Report.

to leave Qatar within 14 days, under the threat of civil penalties or criminal sanctions.<sup>35</sup> UAE issued these directives without concern for the fact that many families in Qatar are “mixed” and composed of both Qatari and Emirati nationals. Qatari nationals were not allowed to travel to UAE with their family members, solely by virtue of their Qatari nationality.<sup>36</sup> UAE citizens who remained in Qatar faced threat of severe civil penalties, including deprivation of their nationality, and criminal sanctions.<sup>37</sup>

27. At the same time, UAE and the other States took steps to isolate Qatar from fellow Gulf countries and the rest of the world, and to isolate their own residents from Qatar.
28. UAE closed its airspace and airports to all Qatari airlines and aircraft.<sup>38</sup> On 30 June 2017, Qatar petitioned the International Civil Aviation Organization (“ICAO”) to open international air routes over Gulf waters.<sup>39</sup> On 1 August 2017, shortly before the ICAO convened to announce its decision, UAE and the other States announced, in a victory for Qatar, that they would relax their absolute prohibition against Qatar-registered aircraft in their airspace.<sup>40</sup> Despite this concession, only a week later, UAE General Civil Aviation Authority denied reports that it had in fact opened its airspace to Qatar-registered aircraft.<sup>41</sup> And when Qatar renewed its complaint to the ICAO, the Council declined to engage on the

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<sup>35</sup> *Id.* at para. 34.

<sup>36</sup> The Saudi Press Agency subsequently stated that the governments of KSA and UAE issued instructions to “take into consideration the humanitarian situations” of Saudi-Qatari and Emirati-Qatari joint families in enforcing the Coercive Measures. *King Orders to Take into Consideration Humanitarian Situations of Saudi-Qatari Joint Families*, Saudi Press Agency (11 June 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1638960>; *UAE President issues directives to address humanitarian cases of Emirati-Qatari joint families*, Saudi Press Agency (11 June 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1638974>.

<sup>37</sup> OHCHR Report, para. 34.

<sup>38</sup> UAE subsequently announced that non-Qatari airlines could use Emirati airspace to get to and from Qatar, with prior clearance. *UAE General Civil Aviation Authority confirms commitment to prevent all Qatari airlines and aircraft from landing at UAE's airports*, Saudi Press Agency (13 June 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1639637>.

<sup>39</sup> *See Qatar to challenge airspace blockade at UN special hearing*, THE NEW ARAB (25 June 2017), <https://www.alaraby.co.uk/english/news/2017/6/25/qatar-to-challenge-airspace-Blockade-at-un-sppcial-hearing>.

<sup>40</sup> *ICAO directive a big victory for Qatar*, GULF TIMES (1 Aug. 2017), <http://www.gulf-times.com/story/558593/ICAO-directive-a-big-victory-for-Qatar>.

<sup>41</sup> *See UAE Denies Opening Airspace to Qatar-Registered Aircraft*, Saudi Press Agency (9 Aug. 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1655289>.

basis that it should be addressed in forums other than the ICAO.<sup>42</sup> As a result, Qatar remains surrounded by the airspace of now-hostile nations, greatly limiting the ability of Qatari citizens to travel and forcing all Qatar Airway flights into and out of Hamad International Airport, Qatar's international airport, to navigate through a thin corridor of "open" airspace above Iran.<sup>43</sup>

29. Further, at the direction of their government, all UAE-based airlines ceased providing air service to and from Qatar, and all private and commercial airlines registered in UAE were prohibited from traveling to Qatar, either directly or indirectly.<sup>44</sup> This included Emirates, Etihad, and Flydubai airlines.<sup>45</sup> UAE also closed all Qatar Airways offices in the country.<sup>46</sup>
30. Qatar shares a land border only with KSA. In the past, essential food and medical supplies regularly crossed this border, as did thousands of other goods that were needed to satisfy the needs of the Qatari people. When the Coercive Measures went into effect, this border was closed—a key element of the effort to starve and strangle the Qatari population into submission. Although initially KSA staffed the border with patrols, it then permanently closed the border on 17 November 2017.<sup>47</sup>
31. The remainder of Qatar is bordered by sea. Maritime shipping routes have been drastically impacted by the Coercive Measures. UAE issued a directive informing all ports and shippers within its jurisdiction that UAE ports would no longer accept any vessels

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<sup>42</sup> See *ICAO refuses to politicize Qatar airspace crisis*, DT NEWS OF BAHRAIN (12 Aug. 2017), <http://www.newsofbahrain.com/viewNews.php?ppId=36437&TYPE=Posts&pid=21&MNU=2&SUB=>.

<sup>43</sup> OHCHR Report, para. 30.

<sup>44</sup> See *GACA Bans Qatari Airlines and Aircraft from Landing at Saudi Airports Immediately*, Saudi Press Agency (5 June 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1637369>; *Suspension of flights between Dubai and Doha with effect from 6 June 2017*, Emirates (5 June 2017), [https://web.archive.org/web/20170606220356/https://www.emirates.com/ae/english/about/operational\\_updates/operational\\_updates.aspx](https://web.archive.org/web/20170606220356/https://www.emirates.com/ae/english/about/operational_updates/operational_updates.aspx).

<sup>45</sup> *Flydubai to suspend all flights between Dubai and Doha*, Emirates News Agency (5 June 2017), <http://wam.ae/en/details/1395302617599>; *Emirates suspends flights to and from Qatar*, Emirates News Agency (5 June 2017), <http://wam.ae/en/details/1395302617600>; *Etihad suspends flights to and from Qatar*, Emirates News Agency (5 June 2017), <http://wam.ae/en/details/1395302617604>.

<sup>46</sup> *General Civil Aviation Authority closes down Qatar Airways offices in UAE*, Emirates News Agency (7 June 2017), <http://wam.ae/en/details/1395302617967>.

<sup>47</sup> OHCHR Report, para. 23.

operating under a Qatari flag or, whatever the flag, owned by Qatari individuals or companies, nor would it allow cargo of Qatari origin to be loaded or unloaded in any UAE port, or otherwise in UAE waters.<sup>48</sup> Perhaps as a result of these logistical difficulties, shippers otherwise uninvolved in the dispute have chosen to suspend shipping into and out of Qatar.<sup>49</sup>

32. Communications have also been severely and immediately impeded. Notwithstanding the fact that it is a signatory to a global postal constitution insuring the uninterrupted delivery of mail between nations,<sup>50</sup> UAE suspended postal service into and out of Qatar, refusing to accept or transfer any mail to or from a Qatari address.<sup>51</sup> It is also thought that telecommunications between Qatar and UAE are being interrupted and that access from the Four States to numerous Qatar-based websites has been blocked from within their borders.<sup>52</sup>
33. When considered collectively, the closures of the KSA land border, UAE seaports, and the airspace over the Four States have cut off the majority of Qatar's traditional access points, not only to the Gulf, but to the region and the world at large. While the government and people of Qatar have sought alternative routes to prevent starvation and other drastic shortages of vital goods and services, the coordinated actions of the Four States were plainly calculated to inflict massive suffering upon the Qatari population.

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<sup>48</sup> Dr. Abdullah Salem Alkathiri, *Subject: Implementation Process of the decision related to Qatar sanctions*, Federal Transport Authority – Land & Maritime (11 June 2017), available at <http://dpworld.ae/uploads/Circular/English/64615201721820AM414-Entry%20Restrictions%20to%20All%20Qatar%20Vessels%20and%20C.pdf>.

<sup>49</sup> See, e.g., *China's COSCO Shipping suspends services to Qatar amid row*, REUTERS (11 June 2017), <https://www.reuters.com/article/us-gulf-qatar-shipping/chinas-cosco-shipping-suspends-services-to-qatar-amid-row-idUSKBN193071>; Jonathan Saul, *Evergreen and OOCL suspend Qatar shipping services*, REUTERS (7 June 2017), <https://uk.reuters.com/article/uk-gulf-qatar-shipping/evergreen-and-oocl-suspend-qatar-shipping-services-idUKKBN18Y10I>.

<sup>50</sup> See Constitution of the Universal Postal Union (UPU), cmt. to Art. 1 (1 July 1875), <http://www.jus.uio.no/english/services/library/treaties/07/7-05/postal-union.xml>; Universal Postal Union, *Letter Post Manual*, at H.1, cmt. 171.2 (2013), [http://www.upu.int/uploads/tx\\_sbdownloader/actInFourVolumesLetterPostManualEn.pdf](http://www.upu.int/uploads/tx_sbdownloader/actInFourVolumesLetterPostManualEn.pdf).

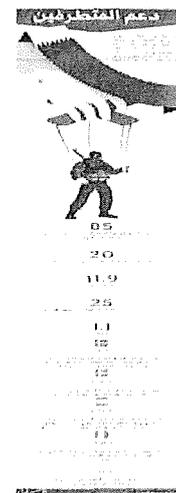
<sup>51</sup> *Emirates Post Group stops all types of postal services to Qatar*, GULF NEWS (8 June 2017), <http://gulfnws.com/news/UAE/government/emirates-post-group-stops-all-types-of-postal-services-to-qatar-1.2040266>.

<sup>52</sup> OHCHR Report, para. 31.

### C. Criminalization of “Sympathy” for Qatar and Incitement of Hate Speech

34. UAE, along with KSA and Bahrain, has promulgated measures criminalizing “sympathizing” with Qatar. On 7 June 2017, the Attorney General of UAE announced that “[s]trict and firm action will be taken against anyone who shows sympathy or any form of bias towards Qatar, or against anyone who objects to the position of the United Arab Emirates, whether it be through the means of social media, or any type of written, visual or verbal form.”<sup>53</sup> This “strict and firm action” includes a jail term of up to 15 years and a fine of not less than AED 500,000 (approx. USD 130,000).<sup>54</sup>
35. After having previously blocked Al Jazeera,<sup>55</sup> UAE also blocked the transmission of other Qatari stations and websites, including channels owned by Qatar’s beIN Media.<sup>56</sup> These acts and the demand that Qatar shutter Al Jazeera have been condemned by Reporters Without Borders and other human rights groups, who highlight the unjustified and disproportionate impacts on core rights.<sup>57</sup>
36. As part of its broad-based attack on free expression, UAE also has engaged in what has been described by the OHCHR as a “widespread defamation and hatred campaign against Qatar.”<sup>58</sup> At least 1,120 press articles and 600 anti-Qatar caricatures were published in

Image 1: Caricature from UAE News Agency



<sup>53</sup> *Tawergha reveals the role of Doha in tearing the Libyans*, @AlBayanNews, Twitter (3 Feb. 2018), <https://twitter.com/AlBayanNews/status/960024890589044736>.

<sup>54</sup> *Qatar crisis: UAE threatens sympathisers with prison*, BBC NEWS (7 June 2017), <http://www.bbc.co.uk/news/world-middle-east-40192730>; *Qatar sympathisers to face fine, jail*, GULF NEWS (7 June 2017), <http://gulfnnews.com/news/uae/government/qatar-sympathisers-to-face-fine-jail-1.2039631>; *Supporting Qatar on social media a cybercrime, says UAE attorney general*, THE NATIONAL (7 June 2017), <https://www.thenational.ae/uae/supporting-qatar-on-social-media-a-cybercrime-says-uae-attorney-general-1.31515>.

<sup>55</sup> *See Al Jazeera blocked by Saudi Arabia, Qatar blames fake news*, CNN MEDIA (24 May 2017), <http://money.cnn.com/2017/05/24/media/al-jazeera-blocked-saudi-arabia-uae/index.html>.

<sup>56</sup> *See Blocked in Dubai: Qatar cartoon and soccer channels*, CNN MEDIA (8 June 2017) <http://money.cnn.com/2017/06/08/media/uae-qatar-media-blocked/index.html>; UAE-Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights—Request for Consultations by Qatar, Doc. No. WT/DSS28/1, 4 August 2017.

<sup>57</sup> *Unacceptable Call for Al Jazeera’s Closure in Gulf Crisis*, Reporters Without Borders (28 June 2017), <https://rsf.org/en/news/unacceptable-call-al-jazeeras-closure-gulf-crisis>.

<sup>58</sup> OHCHR Report, para. 14.

UAE, KSA, and Bahrain between June and October of 2017.<sup>59</sup> As part of this campaign, hundreds of press articles and anti-Qatar caricatures have been, and continue to be, published in UAE, as well as KSA and Bahrain, and popular entertainment programs routinely broadcast anti-Qatar messages.<sup>60</sup> For example, cartoons have appeared in prominent media outlets depicting Qatar as a puppeteer manipulating the marionette of a suicide bomber clad in an explosive belt (*see* Image 1).<sup>61</sup>

37. UAE, in apparent coordination with KSA, Bahrain, and Egypt, has also updated its designated terrorist list to include dozens of individuals, as well as 12 Qatari organizations, that it considers to be “a manifestation of a Qatari government policy of duplicity.”<sup>62</sup> In most cases, there appears to have been no meaningful attempts to investigate or substantiate these false claims, or establish any connection to terrorism, before designation. Among those designated, for instance, are internationally-respected humanitarian organizations such as Qatar Charity,<sup>63</sup> which, as of June 2017, had entered into 70 partnership agreements with United Nations organizations, as well as the Bill and Melinda Gates Foundation, to provide various forms of aid to populations in dire need of assistance.<sup>64</sup> Also designated is the Director of Relief and International Development of Qatar Red Crescent.<sup>65</sup> The United Nations has rejected UAE’s terrorism designations and continues to work with Qatar Charity and Qatar Red Crescent.<sup>66</sup>

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<sup>59</sup> *Id.* at para. 16.

<sup>60</sup> *Id.* at paras. 16-17.

<sup>61</sup> *Supporting Extremists*, ALBAYAN (15 July 2017), <http://www.albayan.ac/onc-world/arabs/2017-06-15-1.2978206>.

<sup>62</sup> *See* Hatem Mohamed, *UAE, Saudi Arabia, Egypt, Bahrain declare details of new terror designations*, Emirates News Agency (25 July 2017), <http://wam.ae/en/details/1395302624655>; Hatem Mohamed and Tariq Alfaham, *Anti-terror quartet adds two entities, 11 individuals to terrorism lists*, Emirates News Agency (23 Nov. 2017), <http://wam.ae/en/details/1395302648918>.

<sup>63</sup> *Victoria Scott, Qatar charities listed as ‘terrorist financiers’ by UAE, Saudi Arabia*, DOHA NEWS (10 June 2017), <https://dohanews.co/qatar-charities-listed-as-terrorist-financiers-by-uae-saudi-arabia/>.

<sup>64</sup> *Qatar Charity reveals its record in global tie-ups*, THE PENINSULA QATAR (18 June 2017), <https://www.thepeninsulaqatar.com/article/18/06/2017/Qatar-Charity-reveals-its-record-in-global-tie-ups>.

<sup>65</sup> *Arab countries blockading Qatar expand blacklist*, AL JAZEERA (24 Nov. 2017), <https://www.aljazeera.com/news/2017/11/arab-nations-blockading-qatar-expand-blacklist-17112306444413.html>.

<sup>66</sup> *See Daily Press Briefing by the Office of the Spokesperson for the Secretary-General*, United Nations (9 June 2017), <https://www.un.org/press/en/2017/db170609.doc.htm> (UN Secretary General Antonio Guterres’

38. Following this mass designation, the Central Bank of the United Arab Emirates ordered banks within UAE to search for and freeze any accounts belonging to the designated individuals or organizations, as well as to “immediately apply enhanced procedures[.]” including enhanced customer due diligence, against Qatari-controlled banks.<sup>67</sup> Reports also indicate that UAE instructed domestic banks to provide details regarding their exposure to Qatari clients, as well as “information about exposure to Qatar through products including equities, bonds, and interbank funds.”<sup>68</sup>
39. The purported anti-terrorism aims that UAE has invoked in designating Qatari organizations such as Qatar Charity as “terrorist organizations” have been criticized by human rights observers, which have concluded that these laws are being utilized as tools of oppression that “enable the criminalization of a wide spectrum of acts of peaceful expression, which are viewed by the authorities as endangering ‘national unity’ or undermining ‘the reputation or position of the state.’”<sup>69</sup>
40. UAE has also worked to ostracize Qatar on the international stage. For example, the General Secretariat of the Organization of the Islamic Cooperation—led by a Saudi Arabian Secretary General—has called upon Qatar to honor its commitments to the GCC “particularly with regard to ceasing support for terrorist groups and their activities and

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spokesman, Stéphane Dujarric, stated that “the UN is bound only by... the sanctions lists put together by UN organs such as the Security Council” and is “not bound by any other lists.”).

<sup>67</sup> *UAE Central Bank issues instructions for freezing accounts, deposits, investments of designated terrorists, terror organisations*, Emirates News Agency (9 June 2017), <http://wam.ae/en/details/1395302618302>; *UAE Central Bank Issues 2 Circulars to Banks, on Transactions with Qatari Banks*, Saudi Press Agency (9 June 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1638735>.

<sup>68</sup> *UAE Central Bank Asks for Due Diligence on Qatar Bank Accounts*, BLOOMBERG (11 June 2017), <https://www.bloomberg.com/news/articles/2017-06-11/uae-central-bank-asks-for-due-diligence-on-qatar-bank-accounts-j3sbca0>.

<sup>69</sup> Patrick Wintour, *UN accuses Saudi Arabia of using terror laws to suppress free speech*, THE GUARDIAN (4 May 2017), <https://www.theguardian.com/world/2017/may/04/un-accuses-saudi-arabia-of-using-terror-laws-to-suppress-free-speech>; *UAE: Terrorism Law Threatens Lives, Liberty*, Human Rights Watch (3 Dec. 2014), <https://www.hrw.org/news/2014/12/03/uae-terrorism-law-threatens-lives-liberty> (“The [UAE’s] deeply flawed new counterterrorism law will enable the courts to convict peaceful government critics as terrorists and sentence them to death.”).

ending media incitement,” without any reference to the conduct of UAE, or the other States, many of which have long-faced such accusations.<sup>70</sup>

#### **D. Effects of the Coercive Measures**

41. The Coercive Measures have had a devastating impact on Qatari nationals and families. Without any warning or conceivable justification, these measures have separated young children from parents, husbands from wives, and disrupted families throughout the region. They have arbitrarily and indiscriminately interfered with the most basic elements of daily life for many within Qatar, UAE, and the other States, including their ability to practice their religion, to receive medical care, to obtain an education, and to work and own property in order to provide for themselves and their families—simply because they are Qatari, married to Qataris, the children of Qataris, or otherwise linked to Qatar. Discussed below are just some of the most significant impacts of the Coercive Measures.

##### **1. Disruption of Family Unity**

42. Due to relative proximity, shared culture, and previously open borders throughout the Gulf, many Qataris have lived, worked, studied, traveled, married, and raised families in the Four States. Prior to the imposition of the Coercive Measures, over 1,900 Qataris lived in UAE, KSA, and Bahrain, and nearly 14,000 residents of those countries lived in Qatar. As of June 2017, mixed marriages involving Qataris and citizens of UAE, KSA, and Bahrain numbered almost 6,500.<sup>71</sup> As a result of these deep family and social ties, the collective expulsion of Qataris from UAE and the other States, the recall of citizens of those States from Qatar, and the prohibitions or restrictions on entry and travel to all Four States have had a profound impact on mixed-nationality families. Qatar’s National Human Rights Committee (“NHRC”), in a report conducted in the months following the imposition of the Coercive Measures, found 620 cases of “family separation” and noted that the “real impact is greater.”<sup>72</sup> Similarly, in interviews conducted by Human Rights Watch (“HRW”),

<sup>70</sup> *OIC calls on Qatar to honor its commitments*, EMIRATES NEWS AGENCY (5 June 2017), <http://wam.ae/en/details/1395302617684>.

<sup>71</sup> *100 Days Under the Blockade: NHRC Third report on human rights violations caused by the blockade imposed on the state of Qatar*, National Human Rights Committee (hereinafter “NHRC Third Report”), at 19.

<sup>72</sup> *Id.* at 5.

almost half of the Qatari, Saudi, and Bahraini individuals interviewed (22 of 50) reported that the travel restrictions had cut them off from immediate family members.<sup>73</sup> Many have reported complying out of fear of imprisonment or other liberty-denying reprisal, even though their painful choice often meant abandoning spouses or children.<sup>74</sup>

43. The Coercive Measures have had an especially detrimental impact on children born in Qatar to Qatari mothers and Emirati fathers, as nationality is passed from the child's father. Those parents have been unable to secure or renew national identification documents for their children as long as they remain in Qatar, because UAE has withdrawn its embassy from Qatar.<sup>75</sup> Instead, fathers cannot obtain passports without taking their children to UAE—leaving them with a choice of, on the one hand, the risk of indefinite separation from their Qatari mothers, and on the other, *de facto* statelessness.<sup>76</sup>
44. Although UAE announced that it would take into consideration the humanitarian situation of “mixed” families, the so-called “reform” is cosmetic. Both the UN High Commissioner on Human Rights and Amnesty International have reported that these measures have largely been ineffective, and that in some cases individuals have not resorted to them for fear of reprisals.<sup>77</sup> HRW reports that only 12 of the 50 Gulf nationals they interviewed had attempted to use “hotlines,” purportedly created for the purpose of providing humanitarian accommodation. Only two of these 12 said that they had obtained permission to live in

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<sup>73</sup> *Gulf Crisis Shows How Discrimination in Saudi Arabia, Bahrain, UAE, and Qatar Tears Families Apart*, Human Rights Watch (21 July 2017), <https://www.hrw.org/news/2017/07/21/gulf-crisis-shows-how-discrimination-saudi-arabia-bahrain-uae-and-qatar-tears>.

<sup>74</sup> See, e.g., Sudarsan Raghavan, *How the showdown in Qatar is ripping families apart*, THE WASHINGTON POST (13 June 2017), [https://www.washingtonpost.com/world/middle-east/how-the-showdown-over-qatar-is-ripping-families-apart/2017/06/13/45534d1c-417f-11e7-b74e-0d2785d3083d\\_story.html?utm\\_term=.41ed827b2e89](https://www.washingtonpost.com/world/middle-east/how-the-showdown-over-qatar-is-ripping-families-apart/2017/06/13/45534d1c-417f-11e7-b74e-0d2785d3083d_story.html?utm_term=.41ed827b2e89); John Elmes, *Gulf education hub 'irreparably damaged' by Qatar crisis*, TIMES HIGHER EDUCATION (7 June 2017), <https://www.timeshighereducation.com/news/gulf-education-hub-irreparably-damaged-qatar-crisis>.

<sup>75</sup> *Qatar: Isolation Causing Rights Abuses*, Human Rights Watch (12 July 2017), <https://www.hrw.org/news/2017/07/13/qatar-isolation-causing-rights-abuses>.

<sup>76</sup> *Id.*

<sup>77</sup> Press Release, Qatar diplomatic crisis: Comment by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein on impact on human rights, OHCHR (14 June 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21739&LangID=E>.

Qatar.<sup>78</sup> The remainder said that they did not think they would receive permission to travel back and forth, or that they were worried that the “hotlines” were simply intended to collect information on those citizens who had refused to return to or from Qatar.<sup>79</sup> Overall, it is clear that these measures have been “clearly insufficient to address the human rights impact.”<sup>80</sup>

## 2. Interference with Medical Treatment

45. No exceptions to UAE’s restrictions on travel and movement have been made for persons who need to receive essential medical treatment. As a result, Qataris requiring medical attention in UAE that is not available in Qatar have been denied necessary care.
46. In addition, the restrictions on ports and shipping have affected Qatar’s access to medicines and medical supplies, the majority of which previously came from suppliers in other Gulf States. Before 5 June 2017, 50 to 60 percent of Qatar’s pharmaceutical stock came from supply companies in Gulf countries, and most of the international pharmaceutical companies that historically traded with Qatar are based in UAE.<sup>81</sup> While the Qatari government has thus far been able to cover the increased cost of importing these materials from other suppliers, the Ministry of Health reported that it was still seeking alternatives for 276 medicines formerly shipped from Gulf States.<sup>82</sup>

## 3. Interference with Education

47. The Coercive Measures have resulted in universities expelling or dropping students from class registration, refusing to refund registration and other fees, and refusing to grant

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<sup>78</sup> *Qatar: Isolation Causing Rights Abuses*, Human Rights Watch (12 July 2017), <https://www.hrw.org/news/2017/07/13/qatar-isolation-causing-rights-abuses>.

<sup>79</sup> *Id.*

<sup>80</sup> *Gulf/Qatar dispute: Human Dignity Trampled and Families facing uncertainty as sinister deadline passes*, Amnesty International (19 June 2017), <https://www.amnesty.org/en/latest/news/2017/06/gulf-qatar-dispute-human-dignity-trampled-and-families-facing-uncertainty-as-sinister-deadline-passes/>.

<sup>81</sup> Barbara Bibbo, *Euro-med urges GCC countries to lift Qatar Blockade*, AL JAZEERA (24 Jan. 2018), <http://www.aljazeera.com/news/2018/01/euro-med-urges-gcc-countries-lift-qatar-blockade-180124190054488.html>.

<sup>82</sup> OHCHR Report, para. 47.

students access to educational records, thereby undermining the education of Qataris studying in universities in the Four States.<sup>83</sup>

48. Over 4,000 Qatari students studied alongside peers at universities in the Four States; similarly, thousands of students from these states attended schools and universities in Qatar.<sup>84</sup> Universities in the Four States, including UAE, summarily withdrew Qatari students from courses and told them to return to Qatar.<sup>85</sup>
49. For these students, the ability to transfer to another institution outside of UAE or the other States is not guaranteed: the Ministry of Education of Qatar estimates that over 200 Qatari students have been unable to transfer in order to pursue their studies for a range of reasons.<sup>86</sup> Many students who were enrolled in universities in UAE were unable to obtain their transcripts, which made it difficult to transfer to new institutions because they could not produce sufficient evidence of their previous studies.<sup>87</sup> Other students were unable to transfer because their schools had different credit systems than Qatari universities, or because their specializations were not available at any Qatari schools.<sup>88</sup> Students have also reported that they were unable to take their final exams, graduation certificates were withheld, educational accounts were closed, and school registrations were terminated

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<sup>83</sup> See generally *Educational Institutions in the Countries of the Blockade are Improper Educational Destination*, National Human Rights Committee; *Qatar: Isolation Causing Rights Abuses*, Human Rights Watch (12 July 2017), <https://www.hrw.org/news/2017/07/13/qatar-isolation-causing-rights-abuses>; OHCHR Report, paras. 50-53.

<sup>84</sup> NHRC Third Report, at 19; OHCHR Report, para. 13.

<sup>85</sup> NHRC Third Report, at 6. As of September 2017, the NHRC reported 213 cases of interference with the right to education in KSA, UAE, and Bahrain, and as of December 2017, the NHRC had received 268 complaints regarding interference with the right to education in Egypt. See *id.* These figures vastly understate the actual impact of the Coercive Measures, as they rely on self-reporting by affected individuals, many of whom fear reprisal. *Report of the NHRC on Violations of the Right to Private Property due to the Siege Imposed on the State of Qatar*, National Human Rights Committee, (5 Dec. 2017) (hereinafter “NHRC Fourth Report”), at 8.

<sup>86</sup> See *With a Blockade deadline looming, families in Qatar face a tough choice: Stay or go?*, LOS ANGELES TIMES (19 June 2017), <http://www.latimes.com/world/middlecast/la-ly-qatar-blockade-20170619-story.html>.

<sup>87</sup> OHCHR Report, para. 52.

<sup>88</sup> *Id.* at para. 53.

without reason.<sup>89</sup> Others were unable to get fully reimbursed for their prior tuition payments, further constraining their ability to pursue a degree elsewhere.

#### 4. Other Effects

50. In addition to the above violations of basic human rights, the Four States also advanced or condoned measures against property held by Qataris, including freezing assets of Qatari nationals and limiting financial transfers to citizens or residents of Qatar.<sup>90</sup> As of September 2017, the NHRC identified 1,050 claims relating to interference with property,<sup>91</sup> and by November 2017 Qatar's Compensation Claims Committee documented 1,900 cases related to property rights.<sup>92</sup> These include Qataris prevented from accessing real property in those countries,<sup>93</sup> Qataris whose businesses depend on long-term agreements importing and exporting goods between Qatar and its neighbors,<sup>94</sup> and Qataris who are unable to manage assets located in the Four States.
51. The Coercive Measures, and in particular the collective expulsion of Qataris and the travel and entry bans and restrictions, have also had debilitating effects on the large number of Qataris that work or own businesses in UAE. As of September 2017, Qatar's NHRC reported no fewer than 112 complaints of interference with the right to work in KSA, UAE, and Bahrain.<sup>95</sup> The measures have also deeply affected non-Gulf citizen workers with Qatari residency, many of whom work and reside in UAE and have been displaced following the expulsion of their Qatari sponsors from UAE.<sup>96</sup> UAE's actions strike at the

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<sup>89</sup> *UNESCO receives Qatari students' violation report*, AL JAZEERA (7 July 2017), <http://www.aljazeera.com/news/2017/07/unesco-receives-qatari-students-violation-report-170707143000226.html>.

<sup>90</sup> See NHRC Fourth Report, at 12 and 13.

<sup>91</sup> See NHRC Third Report, at 9.

<sup>92</sup> OHCHR Report, para. 39.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> NHRC Third Report, at 7.

<sup>96</sup> *Id.* at 9; *Qatar: Isolation Causing Rights Abuses*, Human Rights Watch (12 July 2017), <https://www.hrw.org/news/2017/07/13/qatar-isolation-causing-rights-abuses>.

very core of human rights protections, and in particular, the protection against discrimination under the CERD.

#### **E. International Condemnation of UAE's Actions and Qatar's Response**

52. Shortly after the imposition of the Coercive Measures, the United Nations High Commissioner for Human Rights, Zeid R'ad Al Hussein, stated that he was "alarmed" by the possible human rights impact of the Coercive Measures and their "potential to seriously disrupt the lives of thousands of women, children and men," as well as "extremely troubled" by the criminalization of expressing sympathy for Qatar.<sup>97</sup> In November 2017, the High Commissioner dispatched a technical mission to Qatar, with a mandate to gather information on the Coercive Measures' detrimental impacts on human rights and provide recommendations. The UN Mission found that the Coercive Measures have had significant negative effects on the enjoyment of fundamental human rights in the region, including the rights to freedom of expression, family life, health, and education.<sup>98</sup>
53. HRW has issued several reports on the Coercive Measures and has concluded that the isolation of Qatar by its neighbors "is precipitating serious human rights violations" including "infringing on the right to free expression, separating families, interrupting medical care . . . interrupting education, and stranding migrant workers without food or water."<sup>99</sup> Amnesty International similarly concluded that the "arbitrary measures" taken against Qatar have resulted in "thousands of people in the Gulf fac[ing] the prospect of their lives being further disrupted and their families torn apart."<sup>100</sup>
54. Notwithstanding the cyberattack and the full-scale, premeditated and deliberate assault on Qatar's sovereignty, Qatar has declined to respond with like-for-like conduct. Instead, it

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<sup>97</sup> Press Release, Qatar diplomatic crisis: Comment by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein on impact on human rights, OHCHR (14 June 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21739&LangID=E>.

<sup>98</sup> See OHCHR Report.

<sup>99</sup> *Qatar: Isolation Causing Rights Abuses*, Human Rights Watch (12 July 2017), <https://www.hrw.org/news/2017/07/13/qatar-isolation-causing-rights-abuses>.

<sup>100</sup> *Gulf/Qatar dispute: Human Dignity Trampled and Families facing uncertainty as sinister deadline passes*, Amnesty International (19 June 2017), <https://www.amnesty.org/en/latest/news/2017/06/gulf-qatar-dispute-human-dignity-trampled-and-families-facing-uncertainty-as-sinister-deadline-passes/>.

has urged its residents to remain neutral and to treat with dignity the nationals who have remained in Qatar with the authorization of the Qatari government. In fact, the State has sought to alleviate the potential harm to the many UAE nationals who wish to remain in Qatar by lessening residency permit requirements, since many nationals of UAE cannot obtain renewals of their passports.<sup>101</sup> At the same time, Qatar has worked to minimize the impact of the Four States' discriminatory conduct on Qataris. For example, Qatar established a Compensation Claims Committee to review claims by Qatari individuals and businesses that have been financially harmed by the Coercive Measures.<sup>102</sup> Similarly, the NHRC has worked assiduously to identify and meet with individuals harmed by the Coercive Measures and to cooperate with international bodies, including the OHCHR, to document and, where possible, mitigate the ongoing human rights violations resulting from the Four States' conduct.<sup>103</sup>

55. Without minimizing the ongoing violations of the other States' treaty obligations, it is UAE's conduct that is the focus of this Communication and that forms the basis for the relief requested.<sup>104</sup>

### III. UAE'S VIOLATIONS OF THE CERD

56. The CERD was drafted in the wake of recognition by the UN General Assembly of "consistent condemnation by the United Nations of 'the manifestations of racial and national hatred'" around the world.<sup>105</sup> Draft resolutions, among other things, referred to "the education of public opinion with a view to the eradication of . . . national and religious

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<sup>101</sup> Alaa Shahine and Nafesa Syeed, *Game-Changing Qatar Law to Grant Expats Permanent Residency*, BLOOMBERG (2 Aug. 2017), <https://www.bloomberg.com/news/articles/2017-08-02/qatar-passes-landmark-law-to-grant-permanent-residency-to-expats>.

<sup>102</sup> See Website: Compensation Claims Committee, <http://www.qccc.qa>.

<sup>103</sup> See Website: National Human Rights Committee, <http://nhrc-qa.org/en/>.

<sup>104</sup> While attempts have been made to mitigate the harm caused by the Coercive Measures—and, indeed, Qatar has expended great effort and cost to do so—this fact does not obviate the need for the relief requested in this Communication. The Qatari citizenry and the other affected nationals have attempted to overcome the challenges of the Coercive Measures with stoicism and dignity. Their strength of character in this regard does nothing, sadly, to undo the plainly discriminatory character of the human rights violations about which Qatar complains herein.

<sup>105</sup> Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary*, at 24 (2016); see also UNGA Resolution 1510 (XV) of 12 December 1960.

intolerance” and called on governments to “take all possible steps” to combat such prejudice.<sup>106</sup> The obligations expounded in the CERD are based on widespread recognition by the international community that racial discrimination violates fundamental human rights, including those rights enumerated in the Universal Declaration of Human Rights.

57. UAE has violated its obligations under (*inter alia*) CERD Articles 2, 4, 5, and 6, as well as the moral principles underlying the CERD and the customary law principle of nondiscrimination on arbitrary grounds. UAE’s actions contravene the negative and positive aspects of its obligations under the Convention. Not only has it failed to enact measures to prevent, prohibit, and criminalize racial discrimination, but—extraordinarily for a signatory State—UAE has actively promoted and engaged in racial discrimination and criminalized actions intended to benefit Qataris.
58. In imposing the Coercive Measures, UAE has unlawfully targeted Qatari citizens solely on the basis of their nationality. There can be no legitimate justification for the actions taken, and the blanket nature of these measures—imposed without any individualized hearing or consideration—belies any argument that they were proportionate to a legitimate aim.

#### A. General Framework: Prohibition on Racial Discrimination

59. CERD Article 1(1) defines “racial discrimination” as “*any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*”<sup>107</sup>
60. While Article 1(2) allows States Parties some discretion in applying distinctions between citizens and non-citizens, the Committee has emphasized that this discretion “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

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<sup>106</sup> Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary*, at 25-28 (2016).

<sup>107</sup> UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination (21 Dec. 1965), Art. 1(1) (emphasis added) (hereinafter “CERD”).

Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.”<sup>108</sup> Further, many of the rights and freedoms enumerated in the Convention “are to be enjoyed by all persons living in a given State.”<sup>109</sup>

61. Importantly, Article 1(2) does not permit States Parties to distinguish between different groups of non-citizens.<sup>110</sup> Under the CERD, such differential treatment constitutes prohibited discrimination “if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.”<sup>111</sup> Any distinctions that do not qualify under these criteria are an arbitrary and illegitimate misuse of the discretion afforded to States under Article 1(2). The arbitrariness of the Coercive Measures implemented by UAE against Qatari nationals is informed by the fact that the measures do not apply to other non-citizens of UAE who are subject to its jurisdiction.<sup>112</sup> It cannot be plausibly argued that these measures are proportionate to any legitimate aim.
62. Article 2 outlines the Convention’s core obligations and principles. Among the duties of States Parties enumerated in Article 2(1) is the specific obligation “to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.” UAE has directly contravened this obligation by enacting broad-based measures targeting all Qatari nationals and encouraging citizens and institutions of UAE to do the same.

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<sup>108</sup> CERD Committee, General Recommendation XXX (2004), para. 2; *see also* CERD, Art. 1(2).

<sup>109</sup> CERD Committee, General Recommendation XX (1996), para. 3.

<sup>110</sup> *See generally* CERD Committee, General Recommendation XXX (2004).

<sup>111</sup> *Id.* at para. 4.

<sup>112</sup> *See, e.g., Diop v. France*, Comm. 2/1989, U.N. Doc. A/46/18, at 124, 130 (1991) (Finding no CERD violation based on France’s refusal to admit a Senegalese national to French bar, where said refusal “was based on the fact that he was not of French nationality, not on any of the grounds enumerated in article 1, paragraph 1,” and the allegedly discriminatory provision, which provided that “no one may accede to the legal profession if he is not French,” “operates as a preference or distinction between citizens and non-citizens within the meaning of article 1, paragraph 2” of the CERD); *c.f. LG v. Republic of Korea*, CERD/C/86/D/51/2012 (2015), para. 7.4 (finding that Korea had violated the CERD because it failed to take effective action following a complaint of racial discrimination relating to policy targeting certain non-citizens working in the State, where the determining factor in applying the policy was ethnicity rather than non-citizenship).

63. The Committee has explained that States Parties to the Convention are required to “*prohibit and eliminate* racial discrimination in the enjoyment of civil, political, economic, social and cultural rights.”<sup>113</sup> States Parties must also *take affirmative actions* to “encourage . . . integrationist multiracial organizations” and “other means of eliminating barriers between races[.]”<sup>114</sup> Under Article 2(1) of the CERD, UAE is under an obligation to “pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races[.]”<sup>115</sup> To this end, UAE is obliged to, *inter alia*: (i) refrain from and prevent racial discrimination; (ii) amend, rescind, or nullify laws and regulations with discriminatory effects; and (iii) encourage integration. As elaborated further below, UAE has not only failed to fulfill these obligations, but it has acted in direct contravention of them. UAE’s enactment of blatantly discriminatory measures against Qataris is a clear violation of the CERD.<sup>116</sup>

## **B. Collective Expulsion**

### **1. Prohibition on Collective Expulsion**

64. The Committee has made clear that collective expulsion on the basis of nationality or ethnicity violates rights to non-discrimination under the Convention and international law.

65. In August 2004, the Committee adopted General Recommendation XXX on Discrimination Against Non Citizens (“General Recommendation XXX”). Among others, the principles and recommendations articulated therein require that acceding States:

- i) Ensure that immigration policies do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin;<sup>117</sup>

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<sup>113</sup> CERD Committee, General Recommendation XXX (2004), para. 3 (referencing CERD Art. 5) (emphasis added).

<sup>114</sup> CERD, Art. 2.1(e).

<sup>115</sup> *Id.*

<sup>116</sup> While UAE can be expected to argue that this dispute is “political” in character, and thus unsuitable for this Committee to resolve, such an argument is misguided. Disputes between States inevitably involve a political dimension, and it is squarely within the Committee’s competence to address the Coercive Measures’ discriminatory and devastating impact on the human rights of Qatari nationals and families, as well as nationals of UAE and of other States.

<sup>117</sup> CERD Committee, General Recommendation XXX (2004), para. 9.

- ii) Ensure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping;<sup>118</sup>
  - iii) Ensure that laws concerning deportation or other forms of removal of non-citizens from the jurisdiction of the State party do not discriminate in purpose or effect among non-citizens on the basis of race, colour, or ethnic or national origin, and that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies;<sup>119</sup>
  - iv) Ensure that non-citizens are not subject to collective expulsion, in particular in situations where there are insufficient guarantees that the personal circumstances of each of the persons concerned have been taken into account;<sup>120</sup>
  - v) Avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life.<sup>121</sup>
66. The Committee has brought General Recommendation XXX to the attention of States engaged in acts of collective expulsion or repatriation on multiple occasions. In December 2017, the Committee noted its concern over reports of collective expulsion in Algeria and, taking into account General Recommendation XXX, recommended that the State “[p]ut an end to collective expulsion procedures” and “conduct a case by case examination of the situation of persons susceptible to expulsion[.]”<sup>122</sup> Similarly, the Committee recommended in 2008 that the Dominican Republic “[a]void the expulsion of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life[.]”<sup>123</sup> In 2005, the Committee noted with concern that in 2003, after

<sup>118</sup> *Id.* at para. 10.

<sup>119</sup> *Id.* at para. 25.

<sup>120</sup> *Id.* at para. 26.

<sup>121</sup> *Id.* at para. 28.

<sup>122</sup> CERD Committee, Final Observations on the combined 20<sup>th</sup> and 21<sup>st</sup> periodic reports of Algeria, CERD/C/DZA/CO/20-21 (21 December 2017), para. 20 (unofficial translation).

<sup>123</sup> Report of the CERD on its Seventy-second and Seventy-third Sessions, U.N. Doc. A/63/18 (2008), para. 110.

Turkmenistan repealed a bilateral agreement with Russia regarding dual citizenship, individuals in the country that elected Russian citizenship were “allegedly required to leave the country rapidly.”<sup>124</sup>

67. The International Court of Justice (“ICJ”) has also acknowledged that mass expulsion based on ethnicity or nationality implicates the CERD. In *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, the ICJ issued an order for provisional measures in response to assertions that ethnic Georgians had been expelled from areas under Russian control.<sup>125</sup> The Order called on both parties to “(1) refrain from any act of racial discrimination against persons, groups of persons or institutions; (2) abstain from sponsoring, defending or supporting racial discrimination by any persons or organizations, (3) do all in their power, whenever and wherever possible, to ensure, without distinction as to national or ethnic origin, (i) security of persons; (ii) the right of persons to freedom of movement and residence within the border of the State; (iii) the protection of the property of displaced persons and of refugees; (4) do all in their power to ensure that public authorities and public institutions under their control or influence do not engage in acts of racial discrimination against persons, groups of persons or institutions.”<sup>126</sup>
68. Other human rights instruments also prohibit collective expulsion on the basis of nationality using similar language to that of the CERD. Interpreting those instruments, judicial bodies have found that such mass expulsions, particularly when implemented without reasonable consideration of individual circumstances, violate provisions of those

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<sup>124</sup> Report of the CERD on its Sixty-sixth and Sixty-seventh Sessions, U.N. Doc. A/60/18(SUPP) (2005), para. 322.

<sup>125</sup> The ICJ later issued a Judgment finding that certain procedural preconditions outlined in Article 22 of the CERD had not been met, meaning that the Court did not have jurisdiction to proceed to the merits of the dispute. It noted, however, that while the Order for provisional measures was no longer operative, “[t]he Parties are under a duty to comply with their obligations under CERD, of which they were reminded in that Order.” *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections Judgment (1 Apr. 2011), para. 186.

<sup>126</sup> *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. Rep. 2008, 353.

instruments.<sup>127</sup> For example, the Arab Charter on Human Rights, to which Qatar and UAE are both parties, prohibits collective expulsion “under all circumstances.”<sup>128</sup> In addition, Article 4 of Protocol 4 to the European Convention on Human Rights expressly prohibits the collective expulsion of aliens.<sup>129</sup> The European Court of Human Rights (“ECtHR”) has found a violation of this provision in six cases, four of which involved expulsion of non-citizens on the basis of nationality or ethnic origin.<sup>130</sup>

69. Article 22(9) of the American Convention on Human Rights also expressly prohibits collective expulsion of aliens. The Inter-American Court of Human Rights (“IACtHR”) has considered the issue of mass expulsion in a series of cases involving the deportation of Haitian nationals from the Dominican Republic.<sup>131</sup> Looking to human rights instruments including the International Covenant on Civil and Political Rights, General Comments of the Human Rights Committee, and the International Law Commission’s draft articles on the protection of the human rights of persons expelled or in the process of being expelled, the IACtHR determined that all expulsions of aliens must adhere to certain minimum standards. In addition to finding that expulsion proceedings must not discriminate for reasons of nationality, race, language, political opinion, social origin or other condition,

<sup>127</sup> A number of human rights instruments embody the same international law principles enumerated in the CERD. The decisions of human rights courts analyzing these instruments are thus relevant to interpretation and application of the CERD to the extent that they consider the same underlying principles. As the International Court of Justice explained in *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, “[a]lthough the Court is in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the [International Covenant on Civil and Political Rights] on that of the [Human Rights Committee], it believes that it should ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty. The point here is to achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with treaty obligations are entitled.” *Id.* at paras. 66-67.

<sup>128</sup> League of Arab States, Arab Charter on Human Rights, May 22, 2004, *entered into force* March 15, 2008, art. 26(2).

<sup>129</sup> “The core purpose of this Article is to prevent States from being able to remove a certain number of aliens without examining their personal circumstances and, consequently, without enabling them to put forward their arguments against the measure taken by the relevant authority.” European Court of Human Rights, *Guide on Article 4 of Protocol No. 4 to the European Convention on Human Rights*, para. 2 (30 Apr. 2017).

<sup>130</sup> *Id.*; see also *Čonka v. Belgium*, App. No. 51564/99 (5 February 2002); *Georgia v. Russia*, App. No. 13255/07 (3 July 2014); *Shioshvili and Others v. Russia*, App. No. 19356/07 (20 Dec. 2016); *Berdzenishvili and Others v. Russia*, App. Nos. 14594/07, 14597/07, 14976/07, 14978/07, 15221/07, 16369/07 and 16706/07 (20 Dec. 2016).

<sup>131</sup> See, e.g., *Case of Expelled Dominicans and Haitians v. Dominican Republic*, Judgment of Aug. 28 2014.

the IACtHR outlined the following procedural guarantees: (i) formal notice of the reasons for expulsion or deportation, including information about the migrant's rights; (ii) the right to appeal an unfavorable decision; and (iii) formal legal notice of the eventual expulsion decision, "which must be duly reasoned pursuant to the law."<sup>132</sup> The IACtHR further noted that the State "must seek to achieve a legitimate purpose pursuant to the Convention, and it must be suitable, necessary and proportionate."<sup>133</sup> To achieve this balance, a State must "analyze the particular circumstances of each case[.]"<sup>134</sup>

## 2. UAE's Violations of the Prohibition on Collective Expulsion

70. On 5 June 2017, UAE published an official statement giving Qatari nationals living in UAE 14 days to leave the country, prohibiting Qatari nationals from entering into or passing through its territory, and recalling its citizens from Qatar.<sup>135</sup>

71. These measures clearly violate the CERD's prohibition on discrimination based on national origin, including discrimination against non-citizens encompassed in General Recommendation XXX. In particular:

- i) The expulsion of Qataris from UAE and the prohibition of entry of Qataris into UAE discriminates against Qataris on the sole basis of their national origin;<sup>136</sup>
- ii) Although UAE has attempted to justify the ban as an effort to fight terrorism (an allegation that is demonstrably false),<sup>137</sup> the expulsion and prohibition of entry of

<sup>132</sup> *Id.* at para. 356.

<sup>133</sup> *Id.* at para. 357.

<sup>134</sup> *Id.*

<sup>135</sup> *United Arab Emirates severs relations with Qatar*, Saudi Press Agency (5 June 2017), <http://www.spa.gov.sa/viewstory.php?lang=cn&newsid=1637351>.

<sup>136</sup> CERD Committee, General Recommendation XXX (2004), para. 9.

<sup>137</sup> See, e.g., *US praises Qatar's fight against terrorism and calls for blockade to be lifted*, MIDDLE EAST MONITOR (22 July 2017), <https://www.middleeastmonitor.com/20170722-us-praises-qatars-fight-against-terrorism-and-calls-for-blockade-to-be-lifted/>; Robert Windrem and William M. Arkin, *Who Planted the Fake News at Center of Qatar Crisis*, NBC NEWS (18 July 2017), <https://www.nbcnews.com/news/world/who-planted-fake-news-center-qatar-crisis-n784056> (noting confirmation by U.S. and Qatari officials that statements allegedly made by the Emir of Qatar were false and likely planted by hackers working for UAE); Qatar Embassy in Washington Press Release, "Qatar regrets the decision by Saudi Arabia, the United Arab Emirates and Bahrain to sever relations" (6 June 2017), <http://washington.embassy.qa/en/news/detail/2017/06/07/qatar-regrets-the-decision-by-saudi-arabia-the-united-arab-emirates-and-bahrain-to-sever-relations> (expressing "deep regret over the decision of Saudi

all Qataris on the sole basis of their national origin without any individualized threat assessment, constitutes unlawful profiling or stereotyping.<sup>138</sup> This blanket expulsion is a disproportionate response to a wholly unsubstantiated threat;

- iii) UAE authorities expelled Qatari residents with no consideration of the personal circumstances of each individual;<sup>139</sup> and
- iv) Qataris have been afforded neither the right to challenge the expulsion order, nor any other right to an effective remedy, by UAE authorities.<sup>140</sup>

72. The blanket expulsion and the entry ban imposed by UAE on all Qataris on the express and sole basis of their nationality is a blatant violation of the prohibition of collective expulsion under the CERD.

### C. Discriminatory Interference with Protected Rights

#### 1. Obligation to Guarantee the Right of Equality before the Law in the Enjoyment of Rights

73. The chapeau to Article 5 of the CERD acknowledges that the rights enumerated therein are linked “with the fundamental obligations laid down in article 2 of [the] Convention.” Article 5, referring to Article 2, not only requires that States Parties prohibit racial discrimination, but also that they “undertake to . . . eliminate racial decimation in all its forms and 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 human rights. These rights include:

- i) The right to marriage and choice of spouse;<sup>141</sup>

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Arabia, the United Arab Emirates and the Kingdom of Bahrain to close their borders and airspace and cut off diplomatic relations,” and calling such measures “unjustified” and “based on baseless and unfounded allegations.”).

<sup>138</sup> CERD Committee, General Recommendation XXX (2004), para. 10.

<sup>139</sup> *Id.* at para. 26.

<sup>140</sup> *Id.* at para. 25.

<sup>141</sup> CERD, Art. 5(d)(iv).

- ii) The right to freedom of opinion and expression;<sup>142</sup>
- iii) The right to public health, medical care, social security and social services;<sup>143</sup>
- iv) The right to education and training;<sup>144</sup>
- v) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;<sup>145</sup>
- vi) The right to own property alone as well as in association with others;<sup>146</sup> and
- vii) The right to equal treatment before the tribunals and all other organs administering justice.<sup>147</sup>

As the Committee confirms in General Recommendation XXX, these rights are granted equally to non-citizens.<sup>148</sup>

## 2. UAE's Discriminatory Interference with Protected Rights

74. By enacting and enforcing the Coercive Measures, UAE has violated a number of the human rights protections recognized under international law and enumerated in Article 5 of the CERD, and has interfered with the rights of Qatari nationals.

### a. Violations of the Right to Marriage and Choice of Spouse

75. In forcing family separation by expelling Qatari nationals, recalling UAE citizens from Qatar, and prohibiting Emiratis from traveling to Qatar, UAE has unlawfully interfered with the rights to marriage and family life.

<sup>142</sup> *Id.* Art. 5(d)(viii).

<sup>143</sup> *Id.* Art. 5(e)(iv).

<sup>144</sup> *Id.* Art. 5(e)(v).

<sup>145</sup> *Id.* Art. 5(e)(i).

<sup>146</sup> *Id.* Art. 5(d)(v).

<sup>147</sup> *Id.* Art. 5(a).

<sup>148</sup> *See* CERD Committee, General Recommendation XXX (2004), paras. 29-38.

76. The CERD protects the right of individuals to marry (and be married) without discriminatory treatment in relation to the exercise and enjoyment of that right.<sup>149</sup> This right (and other associated rights, such as the right to privacy within the family) is enshrined in various other treaties and agreements to which UAE is State Party.<sup>150</sup> These rights are an essential foundation for other rights, including those enumerated in the Convention on the Rights of the Child. That Convention requires States Parties to ensure children are protected from discrimination or punishment on the basis of their parent's status;<sup>151</sup> that children are not separated from their parents against their will;<sup>152</sup> that parents and children have the right to enter and leave their own country and applications for family reunification be dealt with in a "positive, humane and expeditious manner."<sup>153</sup>
77. The expulsion and travel bans imposed by UAE have drastically undermined these rights. As human rights leaders have observed, the Coercive Measures have had "a brutal effect, splitting children from parents and husbands from wives."<sup>154</sup> Zeid R'ad Al Hussein, the United Nations High Commissioner for Human Rights, was "alarmed" by the possible human rights impact of the Coercive Measures, particularly for couples in mixed marriages and their children.<sup>155</sup>
78. For example, H. and his Emirati wife were expecting their second child, and hoped to give birth to the child in UAE. Because their family contains Qataris and Emiratis—including their first child, who is Qatari—the mother and unborn child could not go to UAE without

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<sup>149</sup> CERD, Art. 5(d)(iv).

<sup>150</sup> See, e.g., League of Arab States, Arab Charter on Human Rights, May 22, 2004, *entered into force* March 15, 2008, art. 17; 38, 39.

<sup>151</sup> UN General Assembly, Convention on the Rights of the Child (CRC) (20 Nov. 1989, ratified by UAE on 3 Jan. 1997), Art. 2.

<sup>152</sup> *Id.* Art 9.

<sup>153</sup> *Id.* Art. 10.

<sup>154</sup> *Qatar's blockade in 2017, day by day developments*, AL JAZEERA, (18 Feb. 2018), <http://www.aljazeera.com/news/2017/10/qatar-crisis-developments-october-21-171022153053754.html>.

<sup>155</sup> Press Release, Qatar diplomatic crisis: Comment by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein on impact on human rights, OHCHR (14 June 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21739&LangID=E>.

- separating their family.<sup>156</sup> Because of the nature of the Coercive Measures, the separation could be indefinite. Similarly, S.A. is a Qatari citizen who had been living in UAE. Prior to UAE's collective expulsion of Qatari nationals, she had traveled to Qatar to embark on the religious rite of Umrah with her Qatari family. KSA, however, deprived her of the right to embark on the pilgrimage. At the same time, UAE announced she could no longer return to her home in UAE. As a result, she has been separated from her four Emirati children.<sup>157</sup>
79. According to the NHRC, at least 78 families have been separated by UAE's discriminatory measures.<sup>158</sup> The NHRC reported to the OHCHR that it received a large number of calls immediately after the institution of the Coercive Measures from women who were afraid they would not be able to apply for the renewal of their national passport and Qatar residence identification, and feared being expelled from Qatar or compelled to return to their country of origin, thus being separated from their husband and children.<sup>159</sup> There have been reports of people who have gone into hiding to remain with their families, thus breaching the laws of their own countries and risking punishment in the form of heavy fines, travel prohibitions, or even the loss of citizenship, which would, of course, render these individuals stateless.<sup>160</sup>
80. As summarized by the OHCHR Report, "[t]he decision of 5 June has led to cases of temporary or potentially durable separation of families across the countries concerned, which has caused psychological distress as well as some difficulties for some individuals to economically support their relatives left in Qatar or the other countries."<sup>161</sup>
81. Clearly aware of the need to manage public revulsion against the practice of dividing families, on 11 June 2017, President Sheikh Khalifa bin Zayed Al Nahyan directed Emirati

<sup>156</sup> NHRC Third Report, at 5. All of the individual accounts included in this Communication have been anonymized for the privacy of the harmed individuals.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 4.

<sup>159</sup> OHCHR Report, para. 33.

<sup>160</sup> *Id.* para. 36; Barbara Bibbo, *Euro-med urges GCC countries to lift Qatar Blockade*, AL JAZEERA (24 Jan. 2018), <http://www.aljazeera.com/news/2018/01/euro-med-urges-gcc-countries-lift-qatar-blockade-180124190054488.html>.

<sup>161</sup> OHCHR Report, para. 32.

authorities to take into consideration the humanitarian circumstances of mixed Emirati-Qatari families.<sup>162</sup> As discussed above, this “humanitarian concession,” consisting of a “hotline” to assist such families, did little to ease the impact of UAE’s collective expulsion.<sup>163</sup> Amnesty International separately spoke to numerous individuals who said they had attempted repeatedly, for hours or days, to obtain the promised “humanitarian accommodation.” Those who got through said officials asked for minimal details about their cases and told them they would receive a call back—a call that never came.<sup>164</sup>

82. These arbitrary and discriminatory measures unlawfully interfere with the right to marriage protected by CERD Article 5, as well as associated rights to leave and return to one’s country and the right to nationality.<sup>165</sup>

**b. Violations of the Right to Freedom of Opinion and Expression**

83. The Coercive Measures imposed by UAE have had numerous discriminatory impacts on the right to freedom of expression. The foundational right to freedom of expression is enshrined in multiple international human rights treaties, including those to which UAE is Party.<sup>166</sup> As stated by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in a 2016 report for the UN General Assembly:

The United Nations has long promoted the idea that expression is fundamental to public participation and debate, accountability, sustainable development and human development, and the exercise of all other rights. Indeed, expression should provoke controversy, reaction and discourse, the development of opinion, critical

<sup>162</sup> *Directive to address humanitarian cases of Emirati-Qatari joint families*, UAE Ministry of Foreign Affairs (11 June 2017), <https://www.mofa.gov.ae/EN/MediaCenter/News/Pages/11-06-2017-UAE-Qatar.aspx>.

<sup>163</sup> *UAE exempts Qataris married to Emiratis from expulsion order*, REUTERS (12 June 2017), <https://www.reuters.com/article/us-gulf-qatar-emirates/uac-exempts-qataris-married-to-emiratis-from-expulsion-order-paper-idUSKBN1930V8>.

<sup>164</sup> *Families ripped apart, freedom of expression under attack amid political dispute in Gulf*, Amnesty International (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>.

<sup>165</sup> See Universal Declaration of Human Rights (10 Dec. 1948), Art. 15 (“everyone has the right to a nationality . . . no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality”).

<sup>166</sup> See, e.g., League of Arab States, Arab Charter on Human Rights, May 22, 2004, *entered into force* March 15, 2008, Art. 32; see also Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (10 Dec. 1948), Art. 19.

thinking, even joy, anger or sadness – but not punishment, fear and silence.<sup>167</sup>

84. Consistent with these international norms, Article 30 of UAE's Constitution guarantees "[f]reedom of opinion and of verbal, written and other forms of expression."<sup>168</sup>
85. UAE has directly violated Qatari's freedom of expression. As described above, on 23 May 2017, the state-owned Qatar News Agency website was the subject of a malicious cyberattack, resulting in the publication of fabricated and incendiary statements attributed to Qatar's Emir.<sup>169</sup> Although Qatar immediately repudiated these statements and announced that they were the result of hacking, UAE disseminated them broadly, and used them as pretext for its subsequent actions against Qatar. This State manipulation of the press and falsification of statements and ideas directly interfere with the right to freedom of expression, and in particular with the ability of the press to freely disseminate ideas and information.
86. Further, shortly after the Coercive Measures were imposed, UAE announced that any expressions of sympathy towards Qatar on social media or in any other form would be considered a violation of the Federal Decree-Law no. (5) of 2012, issued on 13 August 2012, On Combatting Cybercrimes.<sup>170</sup> UAE Attorney-General, Hamad Saif al-Shamsi, told Gulf News:

Strict and firm action will be taken against anyone who shows sympathy or any form of bias towards Qatar, or against anyone who objects to the position of the United Arab Emirates, whether it be

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<sup>167</sup> UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/71/373 (6 Sept. 2016), para. 3, *available at* [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/71/373](http://www.un.org/ga/search/view_doc.asp?symbol=A/71/373).

<sup>168</sup> CERD Committee, Consideration of reports submitted by States parties under article 9 of the Convention, Seventeenth periodic report of States parties due in 2007: United Arab Emirates, CERD/C/ARE/12-17 (27 Mar. 2009), at 15.

<sup>169</sup> *See supra* paras. 11-12.

<sup>170</sup> Federal Decree-Law no. (5) of 2012, Issued on 25 Ramadan 1433 AH, Corresponding to 13 August 2012 AD ON COMBATING CYBERCRIMES, *available at* [http://ejustice.gov.ae/downloads/latest\\_laws/cybercrimes\\_5\\_2012\\_en.pdf](http://ejustice.gov.ae/downloads/latest_laws/cybercrimes_5_2012_en.pdf)

through the means of social media, or any type of written, visual or verbal form.<sup>171</sup>

87. As mentioned above, a violation can be penalized with imprisonment of up to 15 years, or fines of up to AED 500,000.<sup>172</sup> Reports indicate that this prohibition is interpreted strictly, and penalties imposed severely. For example, Amnesty International reported that an Emirati man, Ghanim Abdallah Matar, was arrested by UAE authorities for contravening the law by posting a video online “in which he expressed sympathy towards the people of Qatar.”
88. UAE has also launched a discriminatory assault on press freedom in the region by taking action against media outlets with ties to Qatar. UAE has blocked the transmission of Al Jazeera and other Qatari stations and websites.<sup>173</sup> The 13 demands issued by UAE and the other States as conditions for ending the Coercive Measures included a demand that Qatar shut down Al Jazeera and its affiliates, as well as other media outlets with links to Qatar.<sup>174</sup> A United Kingdom (“U.K.”) parliamentary briefing paper notes that “[t]he closure of Al-Jazeera would be a blow to the vibrant Arab-language press, which has developed in recent years, partly following the example of the Qatari network.”<sup>175</sup>

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<sup>171</sup> Miriam M. Al Serkal, *Qatar Sympathisers to Face Fine, Jail*, GULF NEWS (7 June 2017), <http://gulfnnews.com/news/UAE/government/qatar-sympathisers-to-face-fine-jail-1,2039631>.

<sup>172</sup> *Id*; see also *Supporting Qatar on social media a cybercrime, says UAE attorney general*, THE NATIONAL (7 June 2017), <https://www.thenational.ae/uac/supporting-qatar-on-social-media-a-cybercrime-says-uac-attorney-general-1.31515>.

<sup>173</sup> Zahraa Alkhalisi, *Blocked in Dubai: Qatar cartoon and soccer channels*, CNN MEDIA (8 June 2017), <http://money.cnn.com/2017/06/08/media/uac-qatar-media-blocked/index.html>; UAE-Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights—Request for Consultations by Qatar, Doc. No. WT/DS528/1 (31 July 2017), available at [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds526\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds526_e.htm).

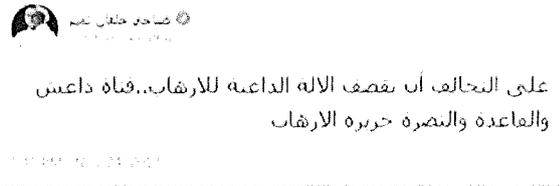
<sup>174</sup> See, e.g., Patrick Wintour, *Qatar Given 10 Days to Meet 13 Sweeping Demands by Saudi Arabia*, THE GUARDIAN (23 June 2017), <https://www.theguardian.com/world/2017/jun/23/close-al-jazeera-saudi-arabia-issues-qatar-with-13-demands-to-end-blockade>; Jack Moore, *Qatar Crisis: Here are the 13 Things Saudi Arabia has Demanded from Its Gulf Neighbor*, NEWSWEEK, (23 June 2017), <http://www.newsweek.com/qatar-crisis-here-are-13-things-saudi-arabia-has-demanded-gulf-state-628473>.

<sup>175</sup> Ben Smith, *Briefing Paper on Qatar Crisis*, Number CBP 8030 (30 June 2017), at 12, available at <http://researchbriefings.files.parliament.uk/documents/CBP-8030/CBP-8030.pdf>.

89. A UAE government official, Dhahi Khalfan Tamim, former chief of the Dubai Police Force and current Head of General Security for the Emirate of Dubai, has also gone so far as to call for the bombing of Al Jazeera on his official Twitter account (*see* Image 2).<sup>176</sup>

90. UAE has even included the editor-in-chief of a Qatari newspaper in its updated terrorist list, solely by virtue of it appears, of his role as a prominent figure in Qatari media.<sup>177</sup>

Image 2: Tweet from UAE Government Official



91. These measures are clearly an unlawful attempt to silence independent voices in the region merely because the government of UAE does not like what they have to say, violating the right to freedom of expression and transgressing the principles of inclusion and respect for diversity that underlie the CERD.

**c. Violations of the Right to Public Health and Medical Care**

92. The expulsion of Qataris and prohibition on travel between UAE and Qatar have also gravely impacted rights to health and medical care. These rights are protected not only under the CERD, but also under international law and other treaties and agreements to which UAE and Qatar are parties.<sup>178</sup> These rights encompass both the liberty to control one’s own health and body, and the entitlement to a system of health protection that provides equality of opportunity for people to enjoy the highest attainable level of health.<sup>179</sup>

<sup>176</sup> Dhahi Khalfan (@Dhahi\_Khalfan), Twitter (24 Nov. 2017), [https://twitter.com/Dhahi\\_Khalfan/status/934069452261425152](https://twitter.com/Dhahi_Khalfan/status/934069452261425152) (unofficial translation: “The alliance should bomb the terrorism propaganda machine. The channel of ISIS, Al Qaeda and Al Nusra, the Jazeera of terrorism.”); *Dubai security chief calls for bombing of Al Jazeera*, AL JAZEERA (25 Nov. 2017), <https://www.aljazeera.com/news/2017/11/dubai-security-chief-calls-bombing-al-jazeera-171125143439231.html>.

<sup>177</sup> OHCHR Report, para. 18.

<sup>178</sup> *See, e.g.*, UN General Assembly, Convention on the Rights of the Child (20 Nov. 1989, ratified by UAE on 3 Jan. 1997), Art. 24; *see also* UN General Assembly, Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (10 Dec. 1948), Art. 25; UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women (18 Dec. 1979, ratified by UAE on 6 October 2004), Art. 12.

<sup>179</sup> *Migrant and International Human Rights Law, A Practitioner’s Guide*, International Commission of Jurists (2014), at 247 (citing International Covenant on Economic, Social and Cultural Rights (“ICESCR”), General Comment No. 14, para. 8).

The Committee has affirmed that States have the obligation to “[e]nsure [...] the right of non-citizens to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative, and palliative health services.”<sup>180</sup>

93. As of 23 November 2017, the Qatar Ministry of Health had received 130 reports of medical complications resulting from the Coercive Measures.<sup>181</sup> Due to the restrictions imposed by the Four States, Qatari nationals receiving medical treatment at hospitals in those States were prohibited from continuing their treatment.<sup>182</sup>

#### d. Violations of the Right to Education

94. The Coercive Measures imposed by UAE have also unduly interfered with the right to education, a right protected under the CERD and other agreements to which UAE and Qatar are parties.<sup>183</sup> CERD General Recommendation XXX specifically notes that this provision applies to access to higher education as well as to elementary or secondary school education.<sup>184</sup>
95. University students have been particularly affected, as many of them were forced to interrupt their programs of study in UAE and return home to Qatar.<sup>185</sup> For example, A.G. is a Qatari citizen and a student in the last year of secondary school in UAE. His mother is Emirati. Because of the Coercive Measures, he was forced to return to Qatar and could not return to Abu Dhabi to complete his exams. As a result, he could not obtain a secondary

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<sup>180</sup> CERD Committee, General Recommendation XXX, para. 36.

<sup>181</sup> OHCHR Report, para. 43.

<sup>182</sup> See NHRC Second Report, at 23; Peter Beaumont, *Human cost of the Qatar crisis: 'families are being torn apart'*, THE GUARDIAN (14 June 2017), <https://www.theguardian.com/world/2017/jun/14/human-cost-of-the-qatar-crisis-families-are-being-torn-apart>.

<sup>183</sup> See, e.g., Organization of the Islamic Conference, Cairo Declaration on Human Rights in Islam (5 Aug. 1990), Art. 9 (signed by UAE). See also UN General Assembly, Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (10 Dec. 1948), Art. 26.

<sup>184</sup> CERD Committee, General Recommendation XXX (2004), para. 31.

<sup>185</sup> For example, a 23-year-old Qatari medical student was forced to leave classes in UAE shortly after the Coercive Measures were declared, before she could take her final exams and graduate after five years of study. Molly Hennessy-Fiske, *With a Blockade deadline looming, families in Qatar face a tough choice: Stay or go?*, LOS ANGELES TIMES (19 June 2017), <http://www.latimes.com/world/middleeast/la-ig-qatar-blockade-20170619-story.html>.

school certificate. And without proof of his educational achievement, he could not apply to any university. A.G. submitted a complaint to the relevant Abu Dhabi educational authority, and his submission was rejected. N.A., a Qatari citizen, is a second-year law student at the Ajman University in Fujairah. Because of the Coercive Measures, she was forced to return to Qatar in the midst of her final exams.<sup>186</sup>

96. These deprivations of educational opportunity are directly caused by UAE's Coercive Measures—by UAE's collective expulsion and restrictions on movement and residence, as well as by UAE's creation of a culture of hostility toward Qatari nationals. As such, UAE's Coercive Measures have caused, in purpose and effect, violations of the right to education.

**e. Violations of the Right to Work**

97. The Convention prohibits States Parties, including UAE, from discriminating in relation to the enjoyment of the "rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration."<sup>187</sup> The right to work is also recognized by international law and is protected under an agreement to which UAE is a signatory.<sup>188</sup>
98. The Coercive Measures, and in particular the forced expulsion of Qatari citizens from UAE and the restrictions on future travel, have forced many people to abandon their jobs for fear of severe punishment if they did not comply.<sup>189</sup> By way of example, Mr. H.A., a Qatari national born in 1953, contacted the National Human Rights Committee, then visited its headquarters and stated: "I reside in the Emirate of Abu Dhabi in the UAE since 30 years and I am working there. After the decision to sever relations with the State of Qatar, I was forced to leave everything in Abu Dhabi and return to my country, and I lost my work and my life."<sup>190</sup> As a result, business relationships and operations involving UAE have been

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<sup>186</sup> NHRC Third Report, at 6.

<sup>187</sup> CERD, Art. 5(e)(i).

<sup>188</sup> See, e.g., League of Arab States, Arab Charter on Human Rights, May 22, 2004, *entered into force* March 15, 2008, art. 34.

<sup>189</sup> NHRC Second Report, at 12. At the beginning of the crisis, the NHRC received numerous complaints from UAE nationals who were unable to work following the Coercive Measures.

<sup>190</sup> NHRC Third Report at 7.

compromised, threatening the livelihood of Qataris working or with interests in UAE. In addition, thousands of workers have reportedly been forced to return to their countries of origin, in some cases, losing their only job and source of financial support.<sup>191</sup>

99. Qatari business owners have been prevented from entering UAE in order to manage and oversee their businesses, renew necessary business and worker licenses, or renew their leases.<sup>192</sup> The NHRC received reports of 71 Qataris working in Dubai when the Coercive Measures were imposed who were forced to leave the country.<sup>193</sup> There are also reports of business people of different Gulf nationalities abandoning their lifelong businesses and rightful properties in Qatar to return to their countries of origin.<sup>194</sup>

#### f. Violations of the Right to Property

100. Given the extensive economic ties between Qatar and UAE, the Coercive Measures have severely disrupted property rights, with devastating impacts on individual livelihoods. The Convention prohibits States Parties, including UAE, from discriminating against individuals in relation to the right to own property by themselves as well as in association with others.<sup>195</sup> The right to property is widely recognized under international law and is also protected under other treaties and agreements to which UAE is a State Party and signatory.<sup>196</sup>

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<sup>191</sup> Barbara Bibbo, *EuroMed urges GCC Countries to lift Qatar Blockade*, AL JAZEERA (24 Jan. 2018), <http://www.aljazeera.com/news/2018/01/euro-med-urges-gcc-countries-lift-qatar-blockade-180124190054488.html>.

<sup>192</sup> *The boycott of Qatar is hurting its enforcers*, THE ECONOMIST (19 Oct. 2017), <https://www.economist.com/news/middle-east-and-africa/21730426-if-saudis-and-emiratis-will-not-trade-doha-iranians-will-boycott> (UAE refused to renew Qatar Insurance's business license, "forcing it to close its branch in the Emirati capital.").

<sup>193</sup> *First Report Regarding the Human Rights Violations as a Result of the Siege on the State of Qatar*, National Human Rights Committee (13 June 2017) (hereinafter "NHRC First Report"), at 13.

<sup>194</sup> Barbara Bibbo, *EuroMed urges GCC Countries to lift Qatar Blockade*, AL JAZEERA (24 Jan. 2018), <http://www.aljazeera.com/news/2018/01/euro-med-urges-gcc-countries-lift-qatar-blockade-180124190054488.html>.

<sup>195</sup> CERD, Art. 5(d)(v).

<sup>196</sup> See, e.g., League of Arab States, Arab Charter on Human Rights, May 22, 2004, entered into force March 15, 2008, art. 26(2); Organization of the Islamic Conference, Cairo Declaration on Human Rights in Islam (5 Aug. 1990), Art. 15 (adopted by UAE).

101. Many Qatari citizens own property in UAE, including private residences, investment properties, financial assets, livestock, and real property.<sup>197</sup> As a result of the Coercive Measures and, in particular, the forced expulsion of Qatari citizens from UAE, Qatari citizens have been denied the ability to access enjoy, utilize, or manage their property in violation of the Convention.
102. The measures implemented by UAE have violated the property rights of hundreds of Qatari nationals. Some Qataris have been unable to access their commercial properties. For example:
- i) Three Qatari brothers have been unable to access several properties in the industrial zone in Sharjah, and to collect rents on the properties.<sup>198</sup>
  - ii) The Qatari owner of B.E. purchased property in Dubai for 1.2 million riyals prior to the implementation of the Coercive Measures. Thereafter, he was unable to travel to Dubai to register the property under his name; as a result, he cannot acquire legal title to the property. Because he is unable to access his property or put it to use, he attempted to sell it. He was told that this is not possible because he does not possess legal title to the property.<sup>199</sup>
103. In many instances, property owners do not even know the status or the security of their property in UAE because they have been unable to enter the country. For example, a Qatari man who owns four residential lands in Masfout Strip, Amjan area, and one industrial land in Arqoub area, Sharjah city has been unable to enter UAE and access his property as a result of the Coercive Measures.<sup>200</sup> Similarly, another Qatari man reported to the NHRC that he has been unable to access his two studios in Jebel Ali in UAE, two studios in Dubai,

<sup>197</sup> OHCHR Report, para. 39.

<sup>198</sup> NHRC Third Report, at 10.

<sup>199</sup> See file no. 1196, received by the Government of Qatar's Compensation Claims Committee. An interview was held with this entity on October 23, 2017.

<sup>200</sup> NHRC First Report, at 17.

a car park, and a hotel apartment with one car park since the Coercive Measures were imposed.<sup>201</sup>

104. Other Qatari nationals have lost access to and use of their homes and apartments. Qataris bought approximately USD 500 million worth of property in Dubai in 2016 alone.<sup>202</sup>
105. Still others have lost livestock and other animals. For example, 600 racing camels owned by Qatari nationals were stranded in UAE. Getting the camels back required a long and arduous journey through Oman, where the animals were loaded onto ships for a circuitous journey to Qatar. Many of the camels were in critical condition upon arrival, dehydrated and exhausted. Some camels died.<sup>203</sup>
106. In addition to these direct effects, the Coercive Measures have had broad and long term impacts. For example, many Qatari nationals are effectively banned from engaging in property transactions due to requirements that they enter into a power of attorney to enable a non-Qatari to sell property on their behalf. Valid powers of attorney must be authenticated by a UAE embassy, but the UAE embassy in Qatar is closed, and UAE embassies in other jurisdictions have reportedly refused to authenticate such powers of attorney for Qatari nationals. Additionally, Qataris have reported that Emiratis are unwilling to enter into business transactions for fear of sanction by their own government, including prosecution for showing “sympathy” to Qatar.
107. UAE also advanced or condoned measures against property held by Qataris, including freezing assets of Qatari nationals and limiting financial transfers to citizens or residents

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<sup>201</sup> NHRC Second Report, at 20.

<sup>202</sup> *The boycott of Qatar is hurting its enforcers*, THE ECONOMIST (19 Oct. 2017), <https://www.economist.com/news/middle-east-and-africa/21730426-if-saudis-and-emiratis-will-not-trade-doha-iranians-will-boycott>; Simon Atkinson, *Qatar row: Economic impact threatens food, flights and football*, BBC NEWS (5 June 2017), <http://www.bbc.com/news/business-40156029>.

<sup>203</sup> Cajsa Wikstrom, *Weary camels sent back to Qatar amid GCC rift*, AL JAZEERA (27 Sept. 2017), <http://www.aljazeera.com/indepth/features/2017/09/travel-weary-camels-qatar-gcc-rift-170926095418401.html>.

of Qatar.<sup>204</sup> The claimed basis for these measures was the named individuals' and entities' "links" to Qatar.<sup>205</sup>

**g. Violations of the Right to Equal Treatment Before Tribunals**

108. The Convention prohibits States Parties, including UAE, from discriminating in relation to the enjoyment of the "the right to equal treatment before the tribunals and all other organs administering justice."<sup>206</sup>
109. Despite this, UAE has imposed numerous measures that deny Qatari citizens and companies access to a fair, transparent, effective, non-discriminatory and accountable justice system. As a result of the Coercive Measures, Qatari nationals have been effectively unable to enter UAE, hire an attorney, or otherwise exercise their rights, challenge discrimination, or have their voices heard. The OHCHR Report in particular underscored the absence of any formal and available litigation mechanism for these victims to claim and/or manage their assets.<sup>207</sup> For example, a Qatari man with ownership interests in a UAE company has been unable to pursue legal remedy for a business dispute. Prior to the implementation of the Coercive Measures, he suspected his two business partners were embezzling funds. In 2016, he filed a criminal suit in UAE against the two partners. Although the suit is still in progress, the Coercive Measures have made it impossible for him to pursue the legal suit because he is prohibited from traveling to UAE and communicating with individuals or courts in UAE.
110. Furthermore, due to the pervasive smear campaign against Qatar and the severe punishments threatened to those who speak out against the Coercive Measures, the obstacles faced by would-be litigants are difficult to overstate, and largely insurmountable. As explained in the OHCHR Report, "[L]egal cooperation has been suspended, including power of attorney. Furthermore, lawyers in these countries are unlikely to defend Qataris

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<sup>204</sup> NHRC Third Report, at 9; NHRC Fourth Report, at 12 and 13.

<sup>205</sup> *UAE asks banks to freeze accounts of those named on Qatar-linked blacklist: WAM*, REUTERS (27 July 2017), <https://www.reuters.com/article/us-gulf-qatar-emirates/uae-asks-banks-to-freeze-accounts-of-those-named-on-qatar-linked-blacklist-wam-idUSKBN1AC0Y11>.

<sup>206</sup> CERD, Art. 5(a).

<sup>207</sup> OHCHR Report, para. 40.

as this would likely be interpreted as an expression of sympathy towards Qatar.<sup>208</sup> The Coercive Measures therefore not only preclude victims from seeking recompense but also infringe the right of individuals and companies to defend themselves if claims are brought against them in UAE.

#### D. Inciting Racial Hatred

##### 1. Obligation to Condemn Racial Hatred and Incitement

111. Under Article 4 of the CERD, parties to the Convention “[s]hall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.”<sup>209</sup> Furthermore, States must “declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, [and] incitement to racial discrimination...”<sup>210</sup> UAE also has an obligation to condemn propaganda that promotes racial hatred or discrimination in any form.<sup>211</sup> Importantly, the Committee has made clear “that the provisions of article 4 are of a mandatory character.”<sup>212</sup> As confirmed by the Committee, “[p]ublic authorities at all administrative levels . . . are bound by this paragraph.”<sup>213</sup>
112. The Committee has recognized that prohibited racist hate speech “can take many forms and is not confined to explicitly racial remarks.”<sup>214</sup> It includes statements that discriminate on grounds of national origin, such as statements directed against immigrants or non-citizens.<sup>215</sup> States Parties’ obligations under CERD thus mandate “resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of . . . national

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<sup>208</sup> *Id.*

<sup>209</sup> CERD, Art. 4(c).

<sup>210</sup> *Id.* Art. 4(a).

<sup>211</sup> *Id.* Art. 4.

<sup>212</sup> CERD Committee, General Recommendation XV (1993), para. 2 (emphasis added).

<sup>213</sup> *Id.* at para. 7 (emphasis added).

<sup>214</sup> CERD Committee, General Recommendation No. 35 (2013), para. 7.

<sup>215</sup> *Id.* at para. 6.

or ethnic origin, members of ‘non-citizen’ population groups.’<sup>216</sup> This includes with respect to statements made by officials, educators, and the media and statements made on the Internet and other electronic communications networks, and in society at large.<sup>217</sup>

## 2. UAE’s Incitement of Racial Hatred and Failure to Condemn Racial Hatred

113. UAE has directly incited racial hatred against Qatar and Qatari nationals. The malicious cyberattack described above, which resulted in the publication of incendiary statements falsely attributed to Qatar’s Emir, was specifically designed to encourage hostility and incite hatred against Qataris and the Qatari State through manipulation and deception. Notwithstanding Qatar’s immediate disavowal of the statements, UAE disseminated them broadly, and seized upon them as the immediate precipitating event to justify institution of the Coercive Measures.
114. Further, UAE has promulgated measures criminalizing “sympathizing” with Qataris. As stated above, shortly after the Coercive Measures were imposed UAE announced that any expressions of sympathy towards Qatar on social media or in any other form would be considered a violation of federal law.<sup>218</sup> According to the Public Prosecutor’s statement, the penalties for expressing “sympathy” for Qatar include up to 15 years of incarceration alongside a minimum fine of 500,000 dirhams (USD 136,000). The Attorney General of UAE, Hamad Saif al-Shamsi threatened that “[s]trict and firm action will be taken against anyone who shows sympathy or any form of bias towards Qatar, or against anyone who objects to the position of the United Arab Emirates, whether it be through the means of social media, or any type of written, visual or verbal form.”
115. Criminalizing sympathy has been coupled with an international anti-Qatar media campaign. In late 2017, SCL Social, a British communications company, revealed in its public disclosures pursuant to the U.S. Foreign Agents Registration Act that the National

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<sup>216</sup> CERD Committee, General Recommendation XXX (2004), para. 12; *see also* CERD Committee, General Recommendation No. 35 (2013), para. 10 (“The Committee recalls the mandatory nature of Article 4.”).

<sup>217</sup> CERD Committee, General Recommendation XXX (2004), para 12.

<sup>218</sup> United Arab Emirates Public Prosecutions (2017), [http://ejustice.gov.ae/downloads/latest\\_laws/cybercrimes\\_5\\_2012\\_en.pdf](http://ejustice.gov.ae/downloads/latest_laws/cybercrimes_5_2012_en.pdf).

Media Council of UAE had paid it USD 330,000 to launch a public relations campaign against Qatar on social media.<sup>219</sup> According to news reports, the contract involved creating advertisements for Facebook, Twitter, and YouTube linking Qatar with terrorism and using the hashtag #boycottqatar.<sup>220</sup> The company was directed to launch this English-language campaign during the United Nations General Assembly meeting in September 2017.<sup>221</sup>

116. Together, UAE's laws, policies, and actions engender incitement of racial hatred against Qataris. They have also contributed to a general culture of fear for Qataris and those related to them. A Qatari woman with brothers in UAE told Amnesty International that they "are scared to speak to us even over the phone. The law does not allow them to sympathise with us. They are very reserved in the conversations we have, as if we were strangers."<sup>222</sup>
117. Within this hostile environment, government officials have fanned the flames of racist and inciting behavior. On 18 August 2017, an adviser to the Saudi royal court created a hashtag on Twitter, #TheBlacklist, with the stated intention of compiling accusations of "conspiracy" by Qatari nationals against the Four States.<sup>223</sup> He claimed that individuals so accused by online Twitter users would be unable to escape trial.<sup>224</sup> These tweets quickly gained support from UAE's State Minister for Foreign Affairs, Anwar Gargash, who

<sup>219</sup> SCL Social Limited Registration Statement Pursuant to the Foreign Agents Registration Act (6 Oct. 2017), available at <https://www.fara.gov/docs/6472-Registration-Statement-20171006-1.pdf>; Anita Kumar & Ben Wieder, *Steve Bannon's already murky Middle East ties deepen*, MCCLATCHY WASHINGTON BUREAU (23 Oct. 2017), <http://www.mcclatchydc.com/news/politics-government/white-house/article180111646.html>.

<sup>220</sup> Julia Ainsley, Andrew W. Lehren and Anna R. Schechter, *The Mueller effect: FARA filings, soar in shadow of Manafort, Flynn probes*, NBC NEWS (19 Jan. 2018), <https://www.nbcnews.com/news/us-news/mueller-effect-fara-filings-soar-shadow-manafort-flynn-probes-n838571>.

<sup>221</sup> SCL Social Limited Registration Statement Pursuant to the Foreign Agents Registration Act (6 Oct. 2017), available at <https://www.fara.gov/docs/6472-Registration-Statement-20171006-1.pdf>.

<sup>222</sup> *Gulf dispute: Six months on, individuals still bear brunt of political crisis*, Amnesty International (14 Dec. 2017), <https://www.amnesty.org/en/documents/mde22/7604/2017/en/>.

<sup>223</sup> *Saudi Twitter users urged to expose Qatar sympathizers*, AL JAZEERA (20 Aug. 2017), <http://www.aljazeera.com/news/2017/08/saudi-twitter-users-urged-expose-qatar-sympathizers-170820100619561.html>.

<sup>224</sup> *Id.*

tweeted that this movement of accusation and hatred “[was] extremely important” as a way of exposing nationals who were sympathetic to Qatar.<sup>225</sup>

118. On 24 November 2017, a senior security official in UAE called for the bombing of Al Jazeera. On Twitter, the security official falsely accused the Qatari-based media network of having provoked an attack in Egypt and demanded violent reprisal.<sup>226</sup>
119. The culture of hostility negatively impacts Emiratis as well. In December, the President of UAE General Sports Authority, Yousef Al Serkal, was discharged from his position after having been criticized by Emirati media for hugging a Qatari official.<sup>227</sup>

#### **E. Denial of Effective Protection and Remedies Against Acts of Racial Discrimination**

##### **1. Obligation to Assure Effective Protection and Remedies Against Acts of Racial Discrimination**

120. Under CERD Article 6, UAE has an obligation to “assure to everyone within [its] jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to [the] Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”

##### **2. UAE’s Failure to Assure Effective Protection and Remedies Against Acts of Racial Discrimination**

121. As a result of the Coercive Measures, UAE has failed to provide effective protection and remedies to Qatari nationals to seek redress against acts of racial discrimination through UAE courts and institutions. As discussed above, the travel and entry bans quite literally

<sup>225</sup> *Tweet names of Qatar sympathisers to 'blacklist': Saudi royal aide*, MIDDLE EAST EYE (18 Aug. 2017), <http://www.middleeasteye.net/news/saudi-royal-adviser-calls-names-add-blacklist-qatar-sympathisers-1564107564>.

<sup>226</sup> *Dubai security chief calls for bombing Al Jazeera*, AL JAZEERA (25 Nov. 2017), <http://www.aljazeera.com/news/2017/11/dubai-security-chief-calls-bombing-al-jazeera-171125143439231.html>.

<sup>227</sup> *Qatar's blockade in 2017, day by day developments*, AL JAZEERA (21 Oct. 2017), <http://www.aljazeera.com/news/2017/10/qatar-crisis-developments-october-21-171022153053754.html>.

prohibit Qataris from appearing in UAE courts in order to vindicate their rights. Further, the criminalization of certain statements of “sympathy” for Qatar, in combination with the general, state-sponsored climate of hostility towards Qatar and Qataris, critically undermines the ability of Qataris to pursue remedies through local counsel. Also as discussed above, lawyers operating in UAE are unlikely to represent Qataris in general—let alone in challenging the unlawful discrimination resulting from imposition of the Coercive Measures in UAE courts—for fear of being seen as “sympathizing” with Qataris.

122. As a result, even if any remedies against these discriminatory acts are ostensibly available as a matter of UAE law, Qataris are unable to access such remedies, rendering them wholly ineffective and unable to provide any means of redress to Qatari victims.

#### **IV. PRAYER FOR RELIEF**

123. On the basis of the foregoing and consistent with Article 11(1) of the Convention, Qatar respectfully requests that this Committee transmit this Communication to UAE for UAE to (a) respond within the three month period set forth under that Article, and (b) take all necessary steps to end the Coercive Measures, which are in violation of international law and its obligations under the CERD.
124. Qatar reserves its right to supplement and amend this communication in light of developments, as well as its request for relief, and its right to all other dispute resolution avenues that are open to it.

## **Annex 21**

*State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, *Note Verbale* from the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) to the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva, 31 October 2018, transmitting *Note Verbale* from the Permanent Mission of the State of Qatar to the United Nations Office at Geneva to the Committee on the Elimination of Racial Discrimination, 29 October 2018



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REFERENCE: ICERD-ISC 2018/2  
AP/VI/mg

The Secretariat of the United Nations (Office of the High Commissioner for Human Rights) presents its compliments to the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva, and has the honour to transmit herewith the submission from the State of Qatar dated 29 October 2018, concerning communication ICERD-ISC-2018/2, which was submitted to the Committee on the Elimination of Racial Discrimination for consideration under article 11 of the Convention on the Elimination of All Forms of Racial Discrimination, on behalf of the State of Qatar.

The Secretariat avails itself of the opportunity to renew to the Permanent Mission of the United Arab Emirates the assurances of its highest consideration.

A handwritten signature in black ink, appearing to be a stylized name.

31 October 2018



Ref: 2018/0076940/5

الوفد الدائم لدولة قطر / جنيف

**Subject: Communication Submitted Pursuant to Article 11 of the International  
Convention on the Elimination of all Forms of Racial Discrimination**

The Permanent Mission of the State of Qatar to the United Nations Office and other international organizations in Geneva presents its compliments to the Secretariat and to the Committee on the Elimination of Racial Discrimination ("Committee"), and has the honor to refer to the Communication submitted by the State of Qatar under Article 11 of the International Convention on the Elimination of all Forms of Racial Discrimination ("Convention") concerning the United Arab Emirates (ICERD-ISC-2018/2) ("Communication"), as well as the Response of the United Arab Emirates received by the Secretariat on 7 August 2018 and transmitted to the State of Qatar on 8 August 2018.

The Permanent Mission of the State of Qatar recalls that pursuant to Article 11(2) of the Convention, "[i]f the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee[.]" Six months have elapsed since the receipt by the United Arab Emirates of Qatar's Communication, and not only has the United Arab Emirates not withdrawn the coercive measures it imposed against Qatar and Qataris that constitute the subject matter of the Communication, but it has also categorically rejected that its discrimination against Qataris could come within the scope of the Convention.

The State of Qatar rejects the claim of the United Arab Emirates that the discrimination set forth in Qatar's Communication could not come within the scope of the provisions of the Convention and hence is outside the competence of the Committee. The State of Qatar affirms its position that by targeting all Qataris and only Qataris with a series of coercive measures, the United Arab Emirates has violated multiple Convention obligations, including its obligations under Articles 2, 4, 5, 6, and 7, and is thereby "not giving effect to the provisions of the Convention" as required for submission of a matter to the Committee under Article 11.

The Response of the United Arab Emirates to the State of Qatar's Communication confirms that the United Arab Emirates is unwilling to engage constructively with the State of Qatar to settle the matter amicably. It is equally clear that Qataris do not have domestic remedies to invoke or exhaust in the United Arab Emirates. Any nominal remedies are either unavailable or ineffective in light of the expulsion of Qataris from the United Arab Emirates and ensuing travel restrictions, as well as the ongoing campaign of hatred against Qatar and Qataris in the territory of the United Arab Emirates.

Mission permanente  
de l'État du Qatar  
auprès de l'Office  
des Nations-Unies à Genève



الوفد الدائم لدولة قطر  
لدى مكتب الأمم المتحدة  
جنيف

In view of the above, the matter has not been adjusted to the satisfaction of the State of Qatar. Accordingly, the Permanent Mission of the State of Qatar hereby informs the Committee that the State of Qatar elects to exercise its right under Article 11(2) to refer the matter again to the Committee.

The Permanent Mission of the State of Qatar also recalls the Committee's 30 August 2018 information note on inter-state communications, in which the Committee observed that "if one of the States will refer the matter again to the Committee before 8 November 2018, the Committee will have to consider the admissibility of the communication. The Committee has also to ascertain that all available domestic remedies have been exhausted." Accordingly, as further suggested in the Committee's 30 August 2018 note, the State of Qatar stands ready to provide the Committee with any other relevant information that the Committee may request.

In accordance with Article 11(2), the State of Qatar respectfully requests that this notification be provided to the United Arab Emirates.

The Permanent Mission of the State of Qatar avails itself of this opportunity to renew to the Secretariat and to the Committee on the Elimination of Racial Discrimination the assurances of its highest consideration.

  
Geneva, October 29<sup>th</sup>, 2018

**Committee on the Elimination of Racial Discrimination**

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## **Annex 23**

“Al Marri calls for extensive probe against siege nations”, *The Peninsula*, 16 September 2018

## Al Marri calls for extensive probe against siege nations

16 Sep 2018 - 10:03



**Dr Ali bin Smaikh Al Marri called for extensive investigations against Saudi Arabia and the United Arab Emirates for systematic violations and discriminatory measures against Qatari citizens and expatriates.**

**DOHA:** Chairman of the National Human Rights Committee (NHRC), Dr Ali bin Smaikh Al Marri has called for extensive investigations against Saudi Arabia and the United Arab Emirates for gross and systematic violations and discriminatory measures against Qatari citizens and expatriates.

**He also called for the importance of monitoring the implementation by the UAE authorities of the International Court of Justice's ruling on allowing those affected by the blockade of Qatar to sue in UAE courts, besides reuniting families and to allow Qatari students to complete their studies at UAE universities or to give them academic records to complete their studies at other universities.**

**This came during a number of meetings held by the Chairman of the National Human Rights Committee (NHRC) in Geneva on the sidelines of the 39th session**

of the Human Rights Council, including members of the Working Group on Arbitrary Detention, the Working Group on Arbitrary Disappearance, The Middle East and North Africa of the United Nations High Commissioner for Human Rights, the Director of the treaty mechanisms of the Commission, a number of permanent delegates to the Human Rights Council and the head of the European Mission to the Council.

During the meetings, Dr. Al Marri explained the dimensions of the precautionary decision of the International Court of Justice (ICJ) , calling for monitoring the United Nations human rights mechanisms for implementation by the UAE.

He stressed that the NHRC is monitoring the enforcement of the ICJ ruling through its mechanisms. He pointed out that the discriminatory measures against the Qataris are not limited to the UAE only, but rather exceed them equally by the rest of the siege countries.

Commenting on the report of the Special Rapporteur on the arbitrary and unilateral measures he reviewed before the Human Rights Council last Wednesday, the NHRC Chief said: “Although the report acknowledged in paragraphs 9 and 10 the illegality of actions taken by siege countries, and supported the positions of the Office of the High Commissioner for Human Rights and the recent decisions of the International Court of Justice, as well as its acknowledgment of the continued siege , but it did not appreciate the extent of the suffering of the victims and it was not as strict as hoped.”

“We call upon the Special Rapporteur on arbitrary measures to act urgently and take firmer and bolder positions against the siege countries, and we invite him to visit the State of Qatar and the siege countries to find out the serious repercussions on human rights resulting from the blockade.”

During his meeting with the Committee on the Elimination of Racial Discrimination (CERD), Dr Al Marri stressed that the National Human Rights Committee (NHRC) has been following up and monitoring the UAE’s compliance with the ICJ’s decisions on interim measures. He called on the committee to carry out extensive investigations into the UAE’s discriminatory violations and to monitor the enforcement of the decisions of the International Court of Justice.

He also provided the Committee with reliable information and strong evidence for the occurrence of serious discriminatory violations and systematic campaigns by Saudi Arabia and the rest of the siege countries against the Qatari nationals and residents of the State of Qatar.

Dr Al Marri also provided the Committee with all the files that represent a clear condemnation of the Kingdom of Saudi Arabia by the testimony of international organizations recognized for their integrity and professionalism, led by the United Nations itself.

He also called on the Committee to monitor and record violations of the UAE and Saudi Arabia in its report to the Human Rights Council and to issue an urgent call to the siege countries to urge them to respect the human rights conventions and charters, particularly the recommendations and decisions contained in the six letters of the Special Rapporteurs of the Office of the High Commissioner for Human Rights to the siege countries.

The Chairman of the National Human Rights Committee, in his meeting with officials of the Office of the Special Rapporteur on the independence of judges and lawyers, reviewed the cases of obstructing and preventing Qataris from resorting to the courts of the siege countries. He called for an urgent appeal and an

investigation into the matter, and the recording of aggressions against the independence of the judiciary, lawyers and court officials in the siege countries, especially with regard to resorting to national courts.

He also called for the inclusion of such aggressions in the report of the Special Rapporteur on the independence of the judiciary and lawyers before the Human Rights Council and the UN General Assembly. He also provided a background on the decision of the International Court of Justice on the immediate right to litigate, calling for monitoring the UAE's commitment to these decision, pointing out that the UAE is still pursuing a policy of indifference to international resolutions.

During his meeting with a number of members of the Committee on Arbitrary Detention and Forced Disappearance, Dr Al Marri thanked the two Committees for their urgent efforts regarding the Qatari nationals detained by the Saudi authorities.

However, al-Marri stressed that the Saudi authorities have not yet released the detainees or allowed to communicate with them.

Dr Al Marri called for sending a joint mission by the Committee for Arbitrary Detention and Forced Disappearance to Saudi Arabia to know the root causes of arbitrary deprivation of liberty and enforced disappearance of Qatari nationals.

He said that Qataris were exposed to these illegal measures if they entered Saudi Arabia if they were allowed to enter. The findings of the joint mission report should be included in the Commission's annual report to the Human Rights Council. "So far neither we nor the families of Qatari nationals detained in Saudi Arabia can know where they are being held, communicate or know their fate," he said.

In the same context, Dr Al Marri met also with a number of permanent delegates to some of the Member States of the Human Rights Council, as well as with the Head of the European Mission to the Council.

During the meetings, Dr Al Marri discussed the latest human rights violations resulting from the siege on Qatar. He gave them a background on the legal moves of the National Human Rights Committee (NHRC) along with a background on the decision of the International Court of Justice and demanded that they take strict positions in the Human Rights Council against the violations of the siege countries.

Dr Al Marri also discussed the statements made by the diplomatic missions of siege countries to the UN Human Rights Council and said that such statements were proof of their rejection of all calls, statements and reports issued by the United Nations confirming the intention of the siege countries to continue their violations and ignore the international human rights system, in insistence on not retreating from the violations left by the blockade before the Human Rights Council.

## **Related News**

## **Annex 24**

“Marri urges international community to pressure siege countries to stop human rights violations”, *Qatar Tribune*, 30 September 2018

# Qatar Tribune

## Marri urges international community to pressure siege countries to stop human rights violations

Sep 30, 2018

QNA

New York

CHAIRMAN of the National Human Rights Committee (NHRC) Dr Ali bin Smaikh al Marri on Saturday heavily criticised the persistence of the blockading countries in violating human rights, deepening the struggle of peoples by completely ignoring international human rights law.

Al Marri called on the international community, human rights organisations and international parliaments to exert more pressure and prevent the governments of these countries from continuing with their violations.

He was speaking at a seminar organised in New York by the NHRC on the challenges and opportunities facing human rights field as a result of the Qatar blockade.

Assistant Professor of International Law at Qatar University (QU) Dr Ioannis Konstantinidis participated in the talk along with Deputy United Nations Director at Human Rights Watch Akshaya Kumar. The talk was moderated by Peter Coharis, who is one of the leading American legal experts. A number of representatives of UN international missions, human rights activists and representatives of international legal organisations attended the seminar.

Al Marri urged the international community to hold those responsible for the blockade accountable for their human rights violations as well as for ignoring the appeals of the international community and humanitarian organisations, in addition to decisions of the International Court of Justice.

Al Marri stressed that they were not concerned with cutting diplomatic ties for years, but rather they were concerned with ending the struggles of the GCC peoples.

During the seminar, the NHRC chairman gave an overview of the latest ramifications and effects of the blockade. He highlighted the violations documented by the Office of the High Commissioner for Human

Rights and international human rights organisations.

He also highlighted the emergence of other types of violations against Qatari citizens in the blockading countries, such as enforced disappearance, arbitrary detention, piracy and espionage.

Al Marri strongly condemned the Egyptian authorities' harassment of Qatari citizens and officials of Qatari delegations, pointing out that the committee received documented complaints from citizens who were denied entry visas to Egyptian territories. The decision to ban members of official Qatari delegations in the Arab League was also a violation of Arab League agreements.

He added that the NHRC has received a number of complaints from Egyptian residents in Qatar about the harassment they receive at Cairo airport, for no reasons other than being residents of Qatar.

Al Marri said that the NHRC will use international mechanisms to stop such violations and obstacles.

## **Annex 25**

“UN probes siege violations of Qatari students’ rights”, *The Peninsula*, 20 January 2019

# UN probes siege violations of Qatari students' rights

20 Jan 2019 - 7:49



**DOHA:** The United Nation's Special Rapporteur on the Right to Education, Dr Koumbou Boly Barry, said yesterday that she had received invitations to examine the violations of hundreds of Qatari students who had been deprived of their right to education because of the blockade imposed on the State of Qatar, adding that she was having a look at these violations from her position as Special Rapporteur on the right to education.

She commended the State of Qatar for focusing on the development of education and promoting it to advanced levels all over the world. This came during a seminar hosted by Qatar University and organised by the National Committee for Human Rights (NHRC) on the role of UN rapporteurs in protecting human rights. The seminar was moderated by member of NHRC Dr Mohammed Said Al Kuwari.

The special rapporteur on the right to education noted that she met with those affected by the blockade's violations during her visit to Doha, adding that they examined the violations of the right to education, which affected hundreds of students who have been deprived of that right.

All States, except one country in the world, have signed the International Covenant on Civil, Economic and Social Rights, stating that this mechanism, ratified 70 years ago, promotes the freedoms and dignity of the people of the world. She added that her duties involve asking countries that ratified the covenant why they have not honoured its commitments.

She highlighted the existence of about one billion people across the world who are deprived off their right to education, and in this context, she stressed the State of Qatar's commitment to the provision basic education, where all children of school age get their right to basic

education in the country.

She also highlighted other success stories in countries such as Burkina Faso, Niger and Cote d'Ivoire, which in one decade have achieved what they couldn't in 60 years, making clear progress in gender equality in education, helping families educate their children, and people with special needs.

The United Nations High Commissioner for Human Rights' Karim Khazrawi praised for his part the commitment of the State of Qatar to enhancing human rights and coordinating with the designated bodies in that regard.

He added Qatar responded to the recommendations made regarding expatriate workers, noting that very positive results are coming out of that with the cancellation of the kafala system and the exit permits. A total of 919 students at different levels of education were forced to discontinue their studies because of measures taken by the siege countries.

Violations to the rights to education have been documented and complained to the concerned UN organisations including the Unesco, UN Human Rights Commissioner and other human rights organisations in Europe and America.

NHRC earlier said that, a total of approximately 13,314 people were directly affected by the siege imposed by three GCC states and violations included family separations, violations to the right to travel, education, work, freedom of opinion and residency and ownership. The Compensation Claims Committee in Qatar has received more than 10,000 cases related to compensation, human rights and others.

## **Annex 26**

“Report on UAE violations next month, says al-Marri”, *Gulf Times*, 6 December 2018





HE Dr Ali bin Smaikh al-Marri during a meeting with Michel Bachelet in Geneva yesterday.

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#### **QNA/Geneva**

HE the Chairman of the National Human Rights Committee (NHRC) Dr Ali bin Smaikh al-Marri has announced the launch of a comprehensive report next month, documenting violations by the UAE of the decisions of the International Court of Justice (ICJ), the continued obstruction of citizens and residents of Qatar by the UAE, and the prevention of those affected from seeking legal recourse to regain their rights.

The violations come despite the Abu Dhabi authorities' formal commitment to implementing the decisions of the ICJ in this regard.

The NHRC chairman also called on the upcoming Gulf summit to establish a mechanism for redressing and finding a solution to the suffering of the victims of the siege imposed on Qatar. He stressed that any decision coming out of the next summit will not succeed unless it focuses on the crisis resulting from the siege and puts an end to the ongoing suffering of the victims.

During a meeting yesterday with Michel Bachelet, United Nations High Commissioner for Human Rights, HE Dr al-Marri called on the United Nations High Commissioner for Human Rights (UNHCHR) to immediately and effectively move to take steps to stop the UAE's violations, ensure full commitment by the Abu Dhabi authorities to respect the conventions and recommendations of international bodies and implement the precautionary decision of the ICJ on the cessation of discriminatory measures against the citizens and residents of Qatar.

He affirmed the readiness of the permanent committee to co-operate with the UN High Commissioner for Human Rights in all matters that would protect human rights and defend them regionally and internationally and to push for urgent and effective solutions to stop the suffering of thousands of families affected by the siege.

HE Dr al-Marri praised the prominent and effective role played by the UNHCHR in addressing the serious violations caused by the blockade of Qatar through its numerous reports and correspondence with the blockading countries, demanding their cessation of human rights violations and issuing the first official UN report that explicitly condemns such violations and calls for their cessation.

He also called on the UN High Commissioner for Human Rights to take measures to ensure that the blockading countries comply with the findings of the technical mission of the high commissioner following her visit to Doha in November last year. This culminated in the issuance of the first official UN report condemning the violations of the blockading countries and urges them to stop "discriminatory and arbitrary" measures.

He noted that despite the warnings issued by the UN High Commissioner for Human Rights on the dangers of such violations, 11 special rapporteurs of the Human Rights Council and the Group on Arbitrary Detention sent letters to the blockading countries urging them to stop their violations and discriminatory measures against the citizens and residents of Qatar. The blockading countries continue to ignore the resolutions of the United Nations, the international community and human rights organisations, it has been observed.

The NHRC chairman called on the high commissioner to address the blockading countries and exert greater pressure to compel them to comply with the UN resolutions.

HE Dr al-Marri also discussed the issue of four Qatari nationals who are still subjected to enforced disappearance and arbitrary detention by the Saudi authorities. He called on the High Commissioner for Human Rights to hold the Saudi authorities accountable for their whereabouts and press for their immediate release.

He conveyed to the high commissioner the suffering of the Qatari citizens detained and their fears about their fate, in the absence of any information about their whereabouts at present despite all the appeals made by their families and the National Human Rights Committee's efforts concerning the relevant UN mechanisms. All the information requested for by the relevant UN bodies on the identity of Qatari nationals, victims of forced abduction and arbitrary detention, were provided.

He noted that the NHRC holds the Saudi authorities fully responsible legally for the fate of the four Qatari citizens and the psychological and physical damage they may cause. He stressed that the NHRC would not remain silent and would continue its actions and resort to all legal and judicial measures until they are released and redressed.

At the end of the meeting, HE Dr al-Marri handed over to the UNHCHR reports of violations committed in a year and a half since the siege started.

Regarding the Gulf summit, he said in remarks on the sidelines of the meeting with Bachelet that any talk about convening the summit and the decisions that could result from it would not be important if the suffering of the victims of the siege was not a substantive issue in the leaders' discussions.

He said the priority of the agenda of the Gulf summit meeting in Riyadh should be to find concrete and urgent solutions to the tragedy of thousands of citizens and residents of the Gulf countries who continue to suffer violations resulting from the Gulf crisis, take immediate and binding decisions for all the Gulf states to bridge the gap caused by the siege and put an end to the suffering of the Gulf people due to the unilateral measures taken by some GCC states against a Gulf neighbour.

He added, "There is no doubt today that the people of the Gulf do not care much about the convening of the summit or not, as much as restoring the unity of the Gulf nations. This can only be achieved by open talks that start with stopping the arbitrary measures of the siege countries against the Qatar's citizens and residents, through the adoption of urgent measures to redress the harm caused to the victims." He reiterated that the upcoming Gulf summit could not be successful if the issue of crisis victims of the crisis was ignored.

He also stressed the need for the Gulf summit in Riyadh to produce strong and effective decisions and recommendations, including work on the establishment of a human rights system in the GCC that would be at the level of aspirations of the Gulf peoples as well as civil society organisations. He pointed that the current mechanisms adopted by the rules of procedure of the GCC have failed to find a solution to the one-and-a-half-year-long crisis.

The NHRC chairman said the Gulf governments should draw lessons from the current crisis and adopt a new system that includes the establishment of effective dispute resolution mechanisms and a system for the protection of human rights to ensure that the Gulf citizens are not vulnerable to any political disputes or differences between the GCC states, as is the case in regional and international blocs and organisations such as the European Union. "We should not turn a blind eye to the failure of the Gulf and Arab mechanisms of human rights institutions, including the current system of the GCC countries, in defending and lifting injustice from the victims, in parallel with the inability of national institutions and human rights organisations to overcome political differences and find a solution to the crisis," he concluded.



## **Annex 27**

“‘745’ Emirati violations of ICJ decisions”, *Al-Watan*, 24 January 2019 (English translation of Arabic original)

## **“745” Emirati violations of ICJ decisions**

24/1/2019

GENEVA –

His Excellency Dr. Ali Ben Smeikh Al Marri, the Chairman of the National Human Rights Committee in Qatar, unveiled the first report prepared by the National [Human Rights] Committee, documenting, with numbers and victim testimonies, the non-compliance of the United Arab Emirates with the provisional measures order issued by the International Court of Justice. [The Order] required [the United Arab Emirates] to immediately end discriminatory measures targeting the citizens and residents of Qatar.

[Dr. Al Marri] noted that the Report had documented 745 violations affecting the rights of Qatari citizens and residents, committed by Emirati authorities by mid-January – i.e., over the six-month period spanning from the declaration by the authorities in Abu Dhabi of their commitment to implement the ICJ Order.

His Excellency Dr. Ali Bin Smeikh Al Marri said that he had written to His Holiness Pope Francis to ask him to intervene with the Emirati authorities to stop their violations of the human rights of the citizens and residents of the State of Qatar. This came during a press conference held on Wednesday at the Journalists' Club in Geneva, in the presence of the Swiss media and correspondents of Arab and international news providers.

His Excellency Dr. Ali Bin Smeikh Al Marri explained that he enclosed to his letter to His Holiness the Pope a copy of the Report prepared by the National Human Rights Committee on the Emirati violations of the ICJ Order and the overall repercussions of the blockade imposed on Qatar. He requested that His Holiness intervene with the authorities in the United Arab Emirates to stop these violations immediately.

He expressed his appreciation for the efforts exerted by His Holiness Pope Francis to defend human rights and his emphasis on the importance of establishing peace and security in the world in his various statements and visits across the world.

His Excellency the Chairman of the National Human Rights Committee also affirmed that the Report of the Emirati violations to the ICJ order would be sent to more than 400 international organisations and bodies, including the Secretary-General of the United Nations, the United Nations High Commissioner for Human Rights, the International Court of Justice and the Committee on the Elimination of Racial Discrimination.

## **The idea behind the Report**

His Excellency Dr. Ali Bin Smeikh Al Marri affirmed that the 19-page Report covers the period subsequent to the issuance of the Court's order, that is from 23 July 2018 until 15 January 2019.

The Report looks into the degree to which the United Arab Emirates has implemented the Order of the International Court of Justice No. 172 of 23 July 2018, referred to as the order of the International Court of Justice sought by the State of Qatar against the United Arab Emirates. The order required that the United Arab Emirates comply with its obligations under the Convention on the Elimination of All Forms of Racial Discrimination, with regard to its practices and procedures violating the human rights of citizens and residents of the State of Qatar.

Dr. Al Marri began his statement to the press affirming that “the National Human Rights Committee has welcomed the ICJ Order, which comprises two categories of obligations. The first involved reminding the United Arab Emirates of its obligation to comply with its obligations under the Convention on the Elimination of All Forms of Racial Discrimination, by indicating provisional measures set to protect specific rights such as the right to the reunification of separated families, the right to education and the right to access courts and other judicial organs of the United Arab Emirates. The second involved requesting both parties to refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.”

## **Mechanism for monitoring violations**

Dr. Al Marri pointed out that the Report “aims to monitor the extent to which the United Arab Emirates has implemented the ICJ provisional measures order in the case filed by the State of Qatar in accordance with Article 22 of the Convention on the Elimination of All Forms of Racial Discrimination.”

The information contained in the Report was based mainly on the violations reported to the headquarters of the National Human Rights Committee or through telephone calls, through the hotline established specifically to follow up on the implementation of the Order or by e-mail. This was the case since the start of the ongoing blockade on 5 June 2017.

He further added that the National Human Rights Committee asked every affected person wishing to file a complaint to attend its headquarters to open a file and provide the necessary documents and required evidence and communicate with it in the event of any further developments. Following the announcement of the ICJ Order, the National [Human Rights] Committee established two hotlines specifically dedicated to cases involving the United Arab Emirates and falling within the jurisdiction of the International Court of Justice. [The National Human Rights Committee] also called those who had filed complaints related to the United Arab Emirates on 25 July 2018 to inform them of the ICJ Order and their rights resulting therefrom.

He further added: that the Committee also asked the victims to communicate with it if they faced any difficulties. And [it] renewed contact with all victims by telephone during the first week of September 2018 to seek updates on their cases and developments. Complainants were also requested to hand over any additional documents, either in person or via e-mail, with original copies of their files.

He concluded by stating that in December 2018, the National [Human Rights] Committee contacted all the victims mentioned in this Report to obtain their approval and authorisation to include their cases in the Report and to confirm the details and receive updates of their cases.

### **Numbers and facts**

His Excellency the Chairman of the National Human Rights Committee explained that the Report highlights the continuing violations by the United Arab Emirates because of the unilateral arbitrary measures taken against the State of Qatar even after the ICJ Order. The Report also refers to statistics on human rights violations due to arbitrary measures taken by the United Arab Emirates against citizens and residents of the State of Qatar.

The Report also discusses the continued escalation of the Gulf crisis through the dissemination of hate speech and incitement to violence and the broadcast of racist speech against the State of Qatar and its inhabitants.

He affirmed that "[t]he total number of Emirati violations monitored by the National Human Rights Committee amounted to 1,099 violations of the fundamental rights of citizens and residents of Qatar. However, this Report focuses only on the total number of Emirati violations that are encompassed by the ICJ Order, which amount to 745 violations.

Of the 745 violations of fundamental rights addressed in the ICJ Order, the Report refers to 505 violations of the right to access justice (including 498 violations of the right to property and 7 violations of the right to work), followed by 153 violations of the right to education and 87 violations of the right to family reunification.

### **Violations of education**

Regarding the violations of the right to education, the Report prepared by the National Human Rights Committee indicates that despite the fact that the ICJ Order states that Qatari students must be given the opportunity to complete their education in the United Arab Emirates or obtain their academic records if they wish to continue their studies elsewhere, the National Human Rights Committee has documented 159 complaints by students who are either Qatari nationals or residents.

[Dr. Al Marri] pointed out that the UAE has not dealt with the complaints of the Qatari students, with the exception of six cases that have been resolved on account of the fact that they were filed as individual complaints before international bodies, such as UNESCO. The United Arab Emirates quickly addressed [these cases] to avoid international condemnation.

[Dr. Al Marri] noted that this constituted a continuation of the violation of the right to education, since students are still unable to access their academic institutions and there is no clear mechanism in the United Arab Emirates to enable this.

The Report noted that it is clear that the Emirati authorities have not taken the necessary measures and mechanisms. They have not enabled the academic institutions to implement the ICJ Order. They are still prohibited from cooperating with the ousted Qatari students. This has caused harm to [the students] by preventing them from completing their education in the United Arab Emirates, not being refunded for amounts they paid to universities in the United Arab Emirates, being denied access to their academic records, incurring additional financial costs to continue their studies in universities in other countries, being delayed in completing their studies by about one year and a half and being offered no compensation for such a delay.

The National Human Rights Committee explained that the expulsion and suspension of students without legal justification and the prevention of students from completing their studies not only violates their right to education but extends into a violation of their guaranteed right to the freedom of movement and residence, which is sponsored by all international laws and conventions that guarantee the individual freedom of movement. This has affected the rights of Qatari students and residents in the State of Qatar and has amounted to 153 cases of violations documented by the Committee.

### **Violation of family reunion**

According to the Report, one of the most important repercussions of the unilateral and arbitrary measures taken by the United Arab Emirates against the State of Qatar are the challenges faced by mixed families. These measures have caused the disruption of the social fabric of Gulf families.

[The Report] further noted that most of the violations and complaints relate to the most vulnerable groups, such as children and mothers who found themselves victims of these arbitrary measures. This is why the ICJ Order required the United Arab Emirates to reunify families separated by the measures it took on 5 June 2017. It was expected that the United Arab Emirates would take all necessary measures, including the establishment of a clear mechanism to ensure the reunification of families separated by the discriminatory measures taken by the Emirati authorities. The family separation also had repercussions for the right to freedom of movement as mixed families were prevented from travelling between the State of Qatar and the United Arab Emirates for reunification. This caused serious psychological damage to the victims as a result of the unilateral and arbitrary measures.

The Report explained that the National Human Rights Committee monitored some special cases in relation to this right where [family members] were allowed to enter the United Arab Emirates after being harassed at the airport and exposed to difficult entry procedures. However, in most cases, they have not been able to enter yet.

## **Access to the courts**

The Report of the National Human Rights Committee indicates that the United Arab Emirates has violated this right, which is considered one of the basic guarantees in human life. This [violation] resulted from unilateral and arbitrary measures taken against the State of Qatar, whose citizens and residents have not been able to access the judicial organs of the United Arab Emirates.

The National Human Rights Committee has documented 505 cases of violations of the right to access courts and other judicial bodies until January 2019. [This is] despite the ICJ Order requiring the United Arab Emirates to take the necessary steps to allow Qataris affected by its measures adopted in 5 June 2017 to access courts and other judicial bodies in its territory.

By mid-January, seven months after the ICJ Order, the United Arab Emirates did not take any action or establish a clear mechanism to allow access to this right. The Report concluded that violations of the right to access courts and other judicial bodies infringed the right to private property and the right to work referred to in the ICJ Order.

As to the right to property, private property owners and investors, citizens and residents of the State of Qatar, are denied the right to access and dispose of their properties. As to the right to work, arbitrary measures forced investors to liquidate their companies in the United Arab Emirates, which resulted in unemployed persons because of job cuts. Arbitrary measures also cut off the income sources of some families for whom transport between the State of Qatar and the United Arab Emirates was a source of livelihood. Most of these violations continue despite the adoption of the ICJ Order, as victims have not been able to access the courts and other judicial bodies in the United Arab Emirates in order to put an end to the injustice and obtain redress.

## **Continued aggravation by the United Arab Emirates**

On the other hand, the Report of the National Human Rights Committee noted that although "the order of the International Court of Justice stipulates that the two Parties shall refrain from aggravating the Gulf crisis, combat prejudices leading to racial discrimination and promote understanding, tolerance and friendship. However, the United Arab Emirates continues aggravating because of the role played by some officials in the United Arab Emirates, some journalists and social media celebrities".

The Report cited a series of provocative and racist online comments made against the State of Qatar to incite hatred and violence and to discredit the State of Qatar and its leaders. This is in addition to online comments accusing the State of Qatar of terrorism. These online comments were published by a number of officials of the United Arab Emirates, including Deputy Chief of UAE Police and Public Security Dhahi Khalfan Tamim, UAE Ambassador to Saudi Arabia Shakhbout Bin Nahyan, Hamad Al Mazroui, Dr. Abdul Khaliq Abdullah and others.

[The Report] also notes that “UAE newspapers continue to publish hate speech and incite to violence by spreading false news, as is the case with the website of Sky News, who has deviated from the professional and moral values that are more prominent in the media. There has not even been a commitment to the provisions of the International Court of Justice order.”

### **Racial discrimination**

The Report of the National Human Rights Committee explained that the United Arab Emirates and the State of Qatar are considered States Parties to the International Convention on the Elimination of All Forms of Racial Discrimination and neither of them has expressed any reservations to Article 22 of this international convention. The Report notes that “due to the measures taken, the United Arab Emirates has violated the fundamental human rights of the citizens and residents of the State of Qatar under Articles 2 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination, as the State of Qatar and the United Arab Emirates are parties to the Committee on the Elimination of Racial Discrimination.”

It further notes that “The United Arab Emirates has violated its obligations under Articles 4 and 7 of the Committee on the Elimination of Racial Discrimination” in light of its failure to condemn hatred, racial prejudice and incitement to hatred and prejudice against the State of Qatar and Qataris.

It stated that the United Arab Emirates has also failed to provide Qataris under its jurisdiction with effective protection and means of recourse against acts of racial discrimination, in violation of Article 6 of the Convention on the Elimination of All Forms of Racial Discrimination.

### **Conclusions reached by the National [Human Rights] Committee**

The Report of the National Human Rights Committee provided a list of four conclusions:

First, there have been continued violations by the United Arab Emirates of the rights of vulnerable groups, such as women, children, persons with disabilities and the elderly. The arbitrary measures have resulted in the violation of the rights to education, family reunification, employment and health, especially for members of these groups.

Second, victims are still denied access to justice in the United Arab Emirates and their right to litigate, thus depriving them of their right to reparation and restoration for violations of their rights, despite [the] repeated attempts to do so.

Third, victims are still not enabled to access justice in the United Arab Emirates and exercise their right to access courts and other judicial bodies. This includes the exercise of the right to defence, which became a problematic issue for attaining justice for the victims, reparation and restoration of their rights. Moreover, the law criminalising sympathy [with the State of Qatar] adopted by the Emirati authorities on 7 June 2017, providing that sympathy towards the State of Qatar is a punishable offence, has impeded the implementation of the right to

access to justice, as many law firms in the United Arab Emirates have refused to provide legal assistance to Qataris for fear of being subject to the sanctions provided for by that law.

Fourth, human rights violations continue to happen due to measures taken by the United Arab Emirates on 5 June 2017 and only a very small number of cases of those affected have been resolved.

Fifth, the United Arab Emirates has not established a clear mechanism for the implementation of the ICJ Order by defining or making public any mechanism that victims of violations may use to resolve their situation; nor has the United Arab Emirates established hotlines for this purpose.

### **Recommendations**

The Report of the National Human Rights Committee reviewing the degree of compliance by the United Arab Emirates with the ICJ Order after six months [since its issuance] concluded that the United Arab Emirates had continued to commit violations despite the International Court of Justice Order in the Case concerning the Application of the International Convention on the Elimination of All Forms of Racial Discrimination. The general situation of victims of violations remains a growing concern, which must be addressed urgently in view of the repeated violations highlighted in the above-mentioned Order.

These violations can be stopped if the authorities concerned take the necessary measures described in the recommendations below. The National [Human Rights] Committee therefore provided a series of recommendations to four parties: the International Court of Justice; the Committee for the Elimination of Racial Discrimination; the United Arab Emirates; and the State of Qatar.

To the International Court of Justice, the National Human Rights Committee recommended that it remind the United Arab Emirates of its obligation to comply fully with the provisional measures indicated by the Court in its Order of 23 July 2018. The Report also recommended that the International Court of Justice oblige both parties to establish a clear and transparent joint recourse mechanism for all persons affected by the arbitrary measures taken by the United Arab Emirates and to monitor its implementation and take due account of the conclusions and recommendations of the Report in the examination of the case between the State of Qatar and the United Arab Emirates.

To the Committee on the Elimination of Racial Discrimination, the Report recommended inviting both parties to establish a joint, clear and transparent recourse mechanism for all persons affected by the arbitrary measures taken by the United Arab Emirates and to report on its implementation. The Report also called for the Committee on the Elimination of Racial Discrimination to monitor the implementation of the above-mentioned recourse mechanism and to take due account of the conclusions and recommendations of this Report in the examination of the case between the State of Qatar and the United Arab Emirates.

To the Government of the United Arab Emirates, the Report recommended that the United Arab Emirates immediately undertake to implement the provisional measures indicated by

the International Court of Justice; to establish a clear and transparent joint recourse mechanism for all persons affected by the arbitrary measures it has taken and Report on its implementation to the International Court of Justice and the Committee on the Elimination of Racial Discrimination; and immediately refrain from any action likely to aggravate or extend the dispute.

To the Government of the State of Qatar, the Report recommends that it communicate with the United Arab Emirates to establish the above-mentioned clear and transparent joint recourse mechanism for all those affected by the arbitrary measures undertaken and to communicate its implementation to the International Court of Justice and the Committee on the Elimination of Racial Discrimination; to monitor all violations committed after the adoption of the ICJ Order and to report to the International Court of Justice and the Committee on the Elimination of Racial Discrimination; to request the Committee on the Elimination of Racial Discrimination to adopt interim measures of protection in order to prevent any irreparable harm to the rights of the persons protected by the ICJ by virtue of the Convention on the Elimination of All Forms of Racial Discrimination; to prepare a detailed report on the United Arab Emirates' compliance with the order of the ICJ and to submit it to the following bodies and officials: the President of the International Court of Justice; the Secretary-General of the United Nations; the Security Council of the United Nations; the Human Rights Council; and the Committee on the Elimination of Racial Discrimination.



## «745» انتهاكاً إماراتياً لقرارات محكمة العدل

Jan 24, 2019

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كشفت سعادة الدكتور علي بن صميخ المري، رئيس اللجنة الوطنية لحقوق الإنسان بدولة قطر، النقاب عن أول تقرير أعدته اللجنة الوطنية، يوثق بالأرقام وبشهادات لمتضررين، تنصّل دولة الإمارات العربية المتحدة من الالتزام بتنفيذ القرار التحفظي الذي أصدرته محكمة العدل الدولية، ويطالبها بوقف الإجراءات التمييزية بحق المواطنين والمقيمين بدولة قطر، فوراً.

وأشار إلى أن التقرير يوثّق 745 حالة انتهاك إلى غاية منتصف يناير الجاري، ارتكبتها السلطات الإماراتية بحق مواطنين ومقيمين بدولة قطر، أي خلال 6 أشهر من إعلان سلطات أبو ظبي الالتزام بتنفيذ قرار محكمة العدل الدولية. وقال سعادة الدكتور علي بن صميخ المري إنه راسل قداسة البابا فرانسيس- بابا الفاتيكان، طالباً منه التدخل لدى السلطات الإماراتية لوقف انتهاكاتها لحقوق الإنسان التي يتعرض لها المواطنون والمقيمون في دولة قطر من قبل السلطات في دولة الإمارات العربية المتحدة.

جاء ذلك خلال المؤتمر الصحفي الذي عقده أمس الأربعاء، بمقر نادي الصحفيين بجنيف، بحضور وسائل الإعلام السويسرية، ومراسلي وسائل الإعلام العربية والدولية.

ولفت سعادة الدكتور علي بن صميخ المري إلى أنه ضمّن مراسلته لقداسة بابا الفاتيكان، نص التقرير الذي أعدته اللجنة الوطنية لحقوق الإنسان حول الانتهاكات الإماراتية لقرار محكمة العدل الدولية، وتداعيات الحصار المفروض على قطر ككل؛ طالباً من قداسته التدخل لدى السلطات الإماراتية لوقف تلك الانتهاكات فوراً.

وأبدى سعادته تقديره للجهود التي ما فتئ قداسة البابا فرانسيس يبذلها للدفاع عن حقوق الإنسان، وتأكيداً على أهمية إرساء الأمن والسلام في العالم، في مختلف تصريحاته وجولاته عبر دول العالم.

كما أكد سعادة رئيس اللجنة الوطنية لحقوق الإنسان أنه سيتم إرسال تقرير الانتهاكات الإماراتية لقرار محكمة العدل الدولية إلى أكثر من 400 منظمة وهيئة دولية دولية، وعلى رأسها الأمين العام للأمم المتحدة، والمفوض الأمم المتحدة السامي لحقوق الإنسان ومحكمة العدل الدولية، ولجنة القضاء على التمييز العنصري.

فكرة التقرير

أكّد سعادة الدكتور علي بن صميخ المري، أن التقرير الذي صدر في 19 صفحة، يغطي الفترة ما بعد القرار الصادر من المحكمة من تاريخ 23 يوليو 2018 إلى 15 يناير 2019.

ويتناول التقرير مدى تنفيذ دولة الإمارات العربية المتحدة لقرار محكمة العدل الدولية رقم 172 المؤرخ في 23 يوليو 2018، والمعنون بـ حكم محكمة العدل الدولية المقامة من دولة قطر ضد دولة الإمارات العربية المتحدة، حيث نصّ القرار على مطالبة دولة الإمارات العربية المتحدة بأن تحترم التزاماتها بموجب الاتفاقية الدولية للقضاء على كافة أشكال التمييز العنصري، وذلك فيما يتعلّق بالممارسات والإجراءات التي تنتهك حقوق الإنسان لمواطني ومقيمي دولة قطر. واستهل الدكتور المري حديثه للصحفيين، بالتأكيد على «ترحيب اللجنة الوطنية لحقوق الإنسان بقرار محكمة العدل الدولية

الذي يحمل بين طياته شقين من الالتزامات؛ الشق الأول هو تذكير دولة الإمارات العربية المتحدة بواجبها في الامتثال لالتزاماتها بموجب اتفاقية القضاء على جميع أشكال التمييز العنصري وذلك باتخاذ تدابير مؤقتة بغرض الحفاظ على حقوق محددة كالحق في لم شمل الأسر المشتركة التي قُسمت عائلاتها، والحق في التعليم والحق في الوصول إلى المحاكم والهيئات القضائية الأخرى في دولة الإمارات العربية المتحدة. والشق الثاني من القرار هو الإشارة إلى اتخاذ تدبير إضافي موجه إلى الطرفين بالكف عن تصعيد الأزمة الخليجية بهدف ضمان عدم تفاقم نزاعهما».

آلية رصد الانتهاكات

ولفت سعادة الدكتور علي بن صميخ إلى أن التقرير «يهدف إلى رصد مدى التزام دولة الإمارات العربية المتحدة بقرار محكمة العدل الدولية، بشأن التدابير المؤقتة في القضية المرفوعة أمامها من دولة قطر، وفقاً للمادة 22 من اتفاقية منع كافة أشكال التمييز العنصري».

وأوضح أن المعلومات الواردة في التقرير تستند أساساً إلى ما رصدته اللجنة الوطنية لحقوق الإنسان من انتهاكات استقبلتها عن طريق مقرها أو عبر المكالمات الهاتفية، أو عن طريق الخط الساخن الذي أنشئ خصيصاً لمتابعة تنفيذ هذا القرار أو عن طريق البريد الإلكتروني الخاص باللجنة، وذلك منذ بداية الحصار المستمر، بتاريخ 5 يونيو 2017. وصرح قائلاً: طلبت اللجنة الوطنية لحقوق الإنسان من كل متضرر يرغب بتقديم شكوى الحضور إلى مقرها لفتح ملف وتقديم الوثائق اللازمة والأدلة الضرورية، والتواصل معها في حال وجود أي مستجدات. وبعد الإعلان عن قرار محكمة العدل الدولية، قامت اللجنة الوطنية بفتح خطين ساخنين خصصا للقضايا المتعلقة بدولة الإمارات العربية المتحدة التي تقع ضمن اختصاص قرار محكمة العدل الدولية. كما تواصلت هاتفياً مع أصحاب الشكاوى المتعلقة بدولة الإمارات العربية المتحدة بتاريخ 25 يوليو 2018 لإبلاغهم بقرار محكمة العدل الدولية وحقوقهم نتيجة لذلك.

وأضاف: كما طلبت اللجنة من الضحايا التواصل معها في حال ما إذا واجهوا أية صعوبات. وجددت التواصل مع جميع الضحايا عبر الهاتف خلال الأسبوع الأول من شهر سبتمبر 2018 لتحديث حالاتهم وما طرأ عليها من مستجدات. كما طلبت من أصحاب الشكاوى تسليم أي وثائق إضافية إما شخصياً أو عبر البريد الإلكتروني الخاص باللجنة مع ضرورة تقديم نسخ أصلية لملفاتهم.

وخلص إلى القول: في شهر ديسمبر 2018، تواصلت اللجنة الوطنية مع جميع الضحايا المذكورين في هذا التقرير للحصول على موافقتهم وتفويضهم لإدراج حالاتهم في التقرير ولتأكيد التفاصيل وتلقي التحديثات الخاصة بحالاتهم. أرقام وحقائق

وأوضح سعادة رئيس اللجنة الوطنية لحقوق الإنسان أن التقرير يسلط الضوء على استمرار الانتهاكات من طرف دولة الإمارات العربية المتحدة بسبب التدابير التعسفية أحادية الجانب المتخذة ضد دولة قطر حتى بعد صدور قرار محكمة العدل الدولية. كما يرصد التقرير أيضاً إحصاءات الانتهاكات المتعلقة بحقوق الإنسان بسبب الإجراءات التعسفية المتخذة من طرف دولة الإمارات العربية المتحدة ضد مواطني ومقيمي دولة قطر. كما يتطرق التقرير أيضاً إلى استمرار تصعيد الأزمة الخليجية من خلال نشر خطابات الكراهية والتحرير على العنف وبث خطابات التمييز العنصري ضد دولة قطر وساكنيها.

وأكد أن «إجمالي الانتهاكات الإماراتية التي رصدتها اللجنة الوطنية لحقوق الإنسان بلغ 1099 انتهاكاً للحقوق الأساسية للمواطنين والمقيمين في دولة قطر، إلا أن هذا التقرير تعرّض فقط إلى إجمالي الانتهاكات الإماراتية التي تدخل ضمن القرار الصادر من محكمة العدل الدولية؛ والتي بلغ عددها 745 انتهاكاً.

ومن إجمالي 745 انتهاكاً للحقوق الأساسية التي تطرق لها قرار محكمة العدل الدولية؛ يشير التقرير إلى رصد 505 انتهاكات للحق في التقاضي (تشمل 498 انتهاكاً للحق في الملكية، و7 انتهاكات للحق في العمل)، ويليها 153 انتهاكاً للحق في التعليم، و87 انتهاكاً للحق في لم الشمل الأسري.

انتهاكات التعليم

وعن الانتهاكات التي طالت الحق في التعليم، يشير التقرير الذي أعدته اللجنة الوطنية لحقوق الإنسان إلى أنه: وبالرغم من قرار محكمة العدل الدولية، والذي يؤكد على إتاحة الفرصة للطلاب القطريين لإكمال تعليمهم في دولة الإمارات العربية

المتحدة أو الحصول على سجلاتهم التعليمية إذا كانوا يرغبون في مواصلة دراستهم في مكان آخر، فإن اللجنة الوطنية لحقوق الإنسان وثقت 159 شكوى لطلاب وطالبات من مواطني ومقيمي دولة قطر. ونوّه إلى أن الإمارات لم تعالج من شكاوى الطلبة القطريين سوى 6 حالات، تم حلّها لأنها كانت مطروحة كشكاوى فردية في الآليات الدولية مثل اليونسكو. وسارعت الإمارات لحلّها تفادياً للإدانة الدولية، لافتاً إلى أن ذلك يعد استمراراً لانتهاك الحق في التعليم بسبب عدم إمكانية وصول الطلبة لمؤسساتهم التعليمية ولعدم وجود آلية واضحة من قبل دولة الإمارات العربية المتحدة بهذا الخصوص.

ويضيف التقرير: من الواضح أن السلطات الإماراتية لم تتخذ الإجراءات والآلية اللازمة، ولم تمكن مؤسساتها التعليمية من تنفيذ قرار محكمة العدل الدولية، حيث لا تزال تُمنع من التعاون مع الطلاب القطريين المبعدين- وفق الشهادات التي وثقتها اللجنة- ولم يتم التجاوب بشكل فعال مع أي مطلب يسهل للطلاب استكمال دراستهم مما الحق الضرر بهم، من خلال عدم إكمالهم التعليم في دولة الإمارات العربية المتحدة، وعدم استرداد مبالغهم الدراسية المدفوعة للجامعات في دولة الإمارات العربية المتحدة، وعدم إمكانية وصول الطلبة القطريين لسجلاتهم التعليمية، وتحملهم تكاليف مالية إضافية لمواصلة دراستهم في جامعات بدول أخرى. إلى جانب تأخيرهم في استكمال دراستهم بما يقارب السنة والنصف، وعدم وجود آلية تعويض للطلاب الذين اضاعوا سنة ونصف دراسية.

وأوضحت اللجنة الوطنية لحقوق الإنسان أن طرد ووقف الطلاب دون مسوغ قانوني ومنعهم من استكمال الدراسة، لا ينتهك فقط حقهم في التعليم وإنما يمتد لينتهك حقهم المكفول في ضمان حرية التنقل والإقامة، الذي ترعاه كافة القوانين والاتفاقيات الدولية التي تكفل للفرد حق التنقل بحرية، وهذا ما أضر سلباً على حقوق الطلاب القطريين والمقيمين في دولة قطر الذين وصل عددهم إلى 153 حالة انتهاك موثقة لدى اللجنة. انتهاك لم الشمل

ويشير التقرير إلى أنه من أهم تداعيات التدابير التعسفية أحادية الجانب المتخذة ضد دولة قطر من طرف دولة الإمارات العربية المتحدة هي التحديات التي واجهت الأسر المشتركة، فقد سببت هذه التدابير في تمزيق النسيج الاجتماعي للأسرة الخليجية.

وأضاف: لعل أكثر الانتهاكات والشكاوى تتعلق بالفئات الأولى بالرعاية كالأطفال والأمهات الذين وجدوا أنفسهم ضحايا تلك التدابير التعسفية؛ وعليه أتى قرار محكمة العدل الدولية أن تضمن دولة الإمارات العربية المتحدة إعادة لم شمل الأسر القطرية والتي تم فصلها بسبب التدابير التي اعتمدها الإمارات العربية المتحدة في 5 يونيو 2017، وكان من المفترض على دولة الإمارات العربية المتحدة أن تتخذ جميع الخطوات الضرورية بما فيها إنشاء آلية واضحة لضمان إعادة لم شمل العائلات التي فصلتها الإجراءات التمييزية التي اتخذتها السلطات الاماراتية. وامتد هذا الانتهاك ليطل حق الحرية في التنقل والإقامة الذي منع الأسر المشتركة التنقل بين دولة قطر ودولة الإمارات العربية المتحدة ولم شملهم، وهذا ما أدى وبشكل سلبي إلى أضرار نفسية بالغة للضحايا جراء التدابير التعسفية أحادية الجانب.

ونوّه التقرير إلى أن اللجنة الوطنية لحقوق الإنسان رصدت بعض الحالات القليلة الخاصة بهذا الحق التي سُمح لها بدخول دولة الإمارات العربية المتحدة بعد تعرضها لمضايقات في المطار وصعوبة في إجراءات الدخول، أما العدد الأكبر من الحالات لم تتمكن من الدخول بعد.

الوصول إلى المحاكم

ويشير تقرير اللجنة الوطنية لحقوق الإنسان إلى أن دولة الإمارات العربية المتحدة قامت بانتهاك هذا الحق الذي يعتبر من الضمانات الأساسية في حياة الإنسان، وذلك بسبب الإجراءات والتدابير التعسفية أحادية الجانب المتخذة ضد دولة قطر التي لم يتمكن المواطنون والمقيمون على أرضها من الوصول للقضاء الإماراتي.

وقد وثقت اللجنة الوطنية لحقوق الإنسان عدد 505 حالات انتهاك للحق في الوصول إلى المحاكم والهيئات القضائية الأخرى حتى شهر يناير 2019، بالرغم من قرار محكمة العدل الدولية والذي يلزم دولة الإمارات العربية المتحدة باتخاذ الخطوات اللازمة للسماح للقطريين المتأثرين بالتدابير التي اعتمدها دولة الإمارات العربية المتحدة في 5 يونيو 2017 بالوصول إلى المحاكم والهيئات القضائية الأخرى في الإمارات العربية المتحدة.

وإلى غاية منتصف يناير الجاري، وبعد 7 أشهر من صدور قرار محكمة العدل الدولية، لم تقم دولة الإمارات العربية المتحدة بأي إجراء يذكر أو إنشاء آلية واضحة للسماح بالوصول إلى هذا الحق. وخلص التقرير إلى التأكيد أن الانتهاكات الواقعة على ضحايا الحق في الوصول إلى المحاكم والهيئات القضائية الأخرى مس الحق في الملكية الخاصة والحق في العمل والذي نص عليه قرار محكمة العدل الدولية. وذكرت اللجنة الوطنية لحقوق الإنسان أنه من جانب الحق في الملكية تأثر أصحاب الاملاك الخاصة والمستثمرون من مواطني ومقيمي دولة قطر لحرمانهم من الحق في الوصول لأموالهم والتصرف فيها. ومن جانب الحق في العمل أجبرت التدابير التعسفية المستثمرين على تصفية شركاتهم في دولة الإمارات العربية المتحدة، وخلقت عدداً من العاطلين عن العمل جراء فقدانهم لوظائفهم وأعمالهم، وكما قطعت تلك التدابير التعسفية أيضاً مصادر دخل بعض العائلات التي كانت تقف على النقل بين دولة قطر ودولة الإمارات العربية المتحدة وأغلب هذه الانتهاكات لا يزال مستمراً حتى بعد صدور قرار محكمة العدل الدولية حيث لم يتمكن المتضررون من الوصول للمحاكم والهيئات القضائية في دولة الإمارات من أجل انصافهم ورفع الغبن والضرر عنهم. استمرار التصعيد الإماراتي

على الجانب الآخر، نوّه تقرير اللجنة الوطنية لحقوق الإنسان إلى أنه على الرغم من أن «قرار محكمة العدل الدولية ينصّ بإلزام الطرفين بالكف عن تصعيد الأزمة الخليجية ومكافحة التحيزات التي تفضي إلى التمييز العنصري وتعزيز التفاهم والتسامح والصدقة، إلا أن دولة الإمارات العربية المتحدة ما زالت مستمرة في تلك التصعيدات نظراً لانخراط بعض المسؤولين الرسميين في دولة الإمارات العربية المتحدة، وبعض الإعلاميين ومشاهير السوشيال ميديا المعروفين فيه». واستدل التقرير بسلسلة تغريدات تحريضية وعنصرية ضد دولة قطر لبث الكراهية والتحريض على العنف وتشوية سمعة دول قطر وقادتها، إلى جانب تغريدات تتهم دولة قطر بالإرهاب، نشرها عدد من المسؤولين الإماراتيين، يتقدمهم ضاحي خلفان تميم- نائب رئيس الشرطة والأمن العام في دولة الإمارات العربية المتحدة، وسفير دولة الإمارات العربية المتحدة في المملكة العربية السعودية المدعو شخبوط بن نهيان، وحمد المزروعى، والدكتور عبد الخالق عبد الله، وغيرهم. كما يشير إلى «استمرار الصحف الإماراتية وبشكل كبير في نشر خطابات الكراهية والتحريض على العنف من خلال ترويج الأخبار الكاذبة كقناة سكاى نيوز عبر موقعها الاخباري، الذي خرج عن القيم المهنية والأخلاقية التي تكون أكثر بروزاً لدى وسائل الإعلام. ولم يتم حتى الالتزام بما نص عليه قرار محكمة العدل الدولية».

تمييز العنصري

وأوضح تقرير اللجنة الوطنية لحقوق الإنسان أن تعتبر دولة الإمارات العربية المتحدة ودولة قطر من الدول الأطراف في الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري، ولم تتحفظ أي منهما على المادة 22 من الاتفاقية الدولية. وأضاف: «بسبب التدابير التي اتخذتها دولة الإمارات العربية المتحدة، فإن ذلك يجعلها تنتهك حقوق الإنسان الأساسية لمواطني ومقيمي دولة قطر بموجب المادتين 2 و5 من اتفاقية القضاء على جميع أشكال التمييز العنصري، باعتبار دولة قطر والإمارات طرفان في لجنة القضاء على التمييز العنصري».

ونوّه بأن «دولة الإمارات العربية المتحدة انتهكت التزاماتها بموجب المادتين 4 و7 من اللجنة المعنية بالقضاء على التمييز العنصري» بفسلها في إدانة الكراهية والتحيز العنصري والتحريض على مثل هذه الكراهية والتحيز على قطر والقطري. وأضاف: كما أن دولة الإمارات أخفقت في تزويد القطريين ضمن نطاق سلطتها القضائية بحماية فعالة وسبل الانتصاف من أعمال التمييز العنصري، في انتهاك للمادة 6 من اتفاقية القضاء على جميع أشكال التمييز العنصري.

استنتاجات اللجنة الوطنية

وخلص تقرير اللجنة الوطنية لحقوق الإنسان إلى سرد 4 استنتاجات: أولاً؛ استمرار انتهاك دولة الإمارات العربية المتحدة حقوق الفئات الأولى بالرعاية من النساء والأطفال والأشخاص ذوي الإعاقة وكبار سن. وقد تسببت إجراءاتها التعسفية بشكل خاص في الحرمان من التعليم ولم شمل الأسر والتوقف عن العمل وانتهاك الحق في الصحة لا سيما لتلك الفئات. وثانياً: استمرار عدم تمكن الضحايا من الوصول إلى العدالة في دولة الإمارات العربية المتحدة، وممارسة حقهم في التقاضي وما يرتبط به من حقوق أخرى كالحق في الدفاع ما شكل مانعاً من إنصاف الضحايا وتعويضهم واسترجاع

حقوقهم رغم محاولاتهم العديدة.

وثالثاً: استمرار عدم تمكين الضحايا من الوصول إلى العدالة في دولة الإمارات العربية المتحدة وممارسة حقهم في الوصول إلى المحاكم والهيئات القضائية الأخرى وما يرتبط به من حقوق أخرى كالحق في الدفاع الذي يشكل مانعاً من إنصاف هؤلاء الضحايا وتعويضهم واسترجاع حقوقهم رغم محاولاتهم العديدة، كما ان قانون تجريم التعاطف الذي أصدرته السلطات الاماراتية في 7 يونيو 2017، والذي ينص على أن التعاطف مع قطر يعد جريمة معاقباً عليها، أدى إلى عرقلة تنفيذ هذا الحق حيث رفض العديد من مكاتب المحاماة الإماراتية توكيلات قطريين خوفاً من وقوعهم تحت طائلة العقوبات المقررة في القانون المشار إليه.

رابعاً: استمرار انتهاكات حقوق الإنسان بسبب الإجراءات المتخذة من قبل دولة الإمارات العربية المتحدة في 5 يونيو 2017 ولم يحل من قضايا المتضررين سوى عدد بسيط جداً.

خامساً: لم تنشأ دولة الإمارات العربية المتحدة آلية واضحة لتنفيذ قرار محكمة العدل الدولية وذلك من خلال التعريف أو الإشهار عن أي آلية متخذة يتم اللجوء إليها من قبل الضحايا وتسوية أوضاعهم، بالإضافة إلى عدم إنشائها خطوطاً ساخنة لهذا الغرض.

توصيات

كما خلص تقرير اللجنة الوطنية لحقوق الإنسان حول متابعة مدى التزام الإمارات بقرار محكمة العدل الدولية بعد مرور أربعة أشهر، إلى التأكيد أن الانتهاكات لا تزال تُرتكب من قبل دولة الإمارات العربية المتحدة على الرغم من صدور قرار محكمة العدل الدولية في النزاع المعروض عليها بشأن الاتفاقية الدولية للقضاء على كافة أشكال التمييز العنصري. ولا تزال الأوضاع العامة لحقوق المتضررين تثير قلقاً متزايداً، ومن ثم يجب معالجتها بصورة عاجلة، إزاء تكرار الانتهاكات التي سُلط الضوء عليها من قبل قرار محكمة العدل الدولية.

ونوّهت اللجنة الوطنية بأنه يمكن تفادي هذه الانتهاكات إذا ما قام المعنيون من الجهات التي تقع على عاتقها واجبات في هذا الصدد باتخاذ الإجراءات اللازمة والضرورية المبينة في التوصيات الواردة أدناه.

ومن ثمّ، قدمت اللجنة الوطنية جملة توصيات إلى أربع جهات، هي محكمة العدل الدولية، ولجنة القضاء على التمييز العنصري، ودولة الإمارات العربية المتحدة، ودولة قطر.

وأوصت اللجنة الوطنية لحقوق الإنسان محكمة العدل الدولية بأن تذكر دولة الإمارات العربية المتحدة باتخاذ جميع الخطوات اللازمة للامتثال لالتزاماتها بموجب الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري لتنفيذ بنود القرار الصادر منها في 23 يوليو 2018.

كما طالبتها بضرورة إلزام الأطراف بوضع آلية عمل مشتركة واضحة وشفافة لكافة ضحايا الإجراءات التعسفية التي اتخذتها الإمارات العربية المتحدة ومتابعة تنفيذها.

وأخيراً، طالبت اللجنة بضرورة الأخذ بعين الاعتبار لما ورد في هذا التقرير الصادر من اللجنة الوطنية لحقوق الإنسان من استنتاجات وتوصيات وجعله من الوثائق الرسمية في القضية القائمة ما بين دولة قطر والإمارات العربية المتحدة.

وطالبت اللجنة الوطنية لحقوق الإنسان من لجنة القضاء على التمييز العنصري دعوة كلا الطرفين إلى إنشاء آلية مراجعة مشتركة وواضحة وشفافة لجميع الأشخاص المتأثرين بالتدابير التعسفية التي تتخذها دولة الإمارات العربية المتحدة

وتقديم تقرير عن تنفيذها، إلى جانب «مراقبة تنفيذ آلية المراجعة المذكورة أعلاه، ومراعاة الاستنتاجات والتوصيات الواردة في هذا التقرير في دراسة القضية القائمة بين دولة قطر والإمارات العربية المتحدة.

كما طلبت اللجنة الوطنية لحقوق الإنسان من دولة الإمارات ضرورة الالتزام الفوري بتنفيذ قرار محكمة العدل الدولية، وإنشاء آلية مراجعة مشتركة واضحة وشفافة لجميع الأشخاص المتأثرين بالتدابير التعسفية التي اتخذتها والإبلاغ عن

تنفيذها إلى محكمة العدل الدولية ولجنة القضاء على التمييز العنصري، إلى جانب الكف الفوري عن أي تصعيد للأزمة. وأوصت اللجنة الوطنية لحقوق الإنسان الحكومة القطرية بضرورة التواصل مع الجانب الإماراتي للتباحث في إنشاء آلية

مراجعة مشتركة واضحة وشفافة لجميع الأشخاص المتأثرين بالتدابير التعسفية التي اتخذتها والإبلاغ عن تنفيذها إلى محكمة العدل الدولية ولجنة القضاء على التمييز العنصري.

كما أوصتها بضرورة العمل على رصد كافة الانتهاكات الحاصلة بعد هذا القرار وتزويد محكمة العدل الدولية ولجنة القضاء على التمييز العنصري بالتقارير عن ذلك الموضوع، إلى توصية بضرورة الطلب من لجنة القضاء على التمييز العنصري اعتماد تدابير حماية مؤقتة لمنع أي ضرر يتعدى تداركه لحقوق الأشخاص المحميين بموجب الاتفاقية الدولية للقضاء على التمييز العنصري.

وأخيراً، أوصت اللجنة الوطنية الحكومة القطرية بتقديم تقرير مفصل عن مدى التزام دولة الإمارات العربية المتحدة بقرارات محكمة العدل الدولية إلى كل من «محكمة العدل الدولية»، و«الأمين العام للأمم المتحدة»، و«مجلس الأمن»، و«مجلس حقوق الإنسان»، و«لجنة القضاء على التمييز العنصري».

## **Annex 28**

“NHRC unveils report detailing continued rights violation by UAE despite ICJ decision”,  
*The Peninsula*, 24 January 2019

# NHRC unveils report detailing continued rights violation by UAE despite ICJ decision

24 Jan 2019 - 10:45

## The Peninsula

The Chairman of National Human Rights Committee (NHRC), Dr Ali bin Smaikh Al Marri, unveiled the first report prepared by the National Committee, which documents the figures and testimonies of those affected by arbitrary measures taken by the UAE against citizens and residents of the State of Qatar.

The report shows that United Arab Emirates didn't comply with the decisions issued by the International Court of Justice, which states to stop immediately discriminatory measures against citizens and residents.

It also documents 745 cases of violations until mid-January 2019, committed by the UAE authorities against citizens and residents of the State of Qatar. In a press conference held yesterday at the Journalists' Club in Geneva in the presence of the Swiss media and the correspondents of the Arab and international media, Dr. Al Marri said that they will send the report to more than 40 international organization and entities.

Al Marri explained that the report highlights the continuing violations by the UAE because of the unilateral measures taken against Qatar even after the decision of the International Court of Justice. The report also monitors statistics on human rights violations due to arbitrary measures taken by the UAE against citizens and residents of Qatar.

The report also discusses the continued escalation of the Gulf crisis through spreading the hate and incitement to violence and the broadcast of racist speech against Qatar and its residents.

"The total number of UAE violations monitored by the NHRC amounted to 1,099 violations of the fundamental rights of citizens and residents of Qatar, but this report only revealed the total violations of the UAE falling within the decision of the International Court of Justice and which reached to 745 violations," he said.

He pointed out that the UAE has not dealt with the complaints of Qatari students except in six cases which have been resolved because they were presented as individual complaints in international mechanisms such as Unesco. "The UAE rushed to resolve to avoid international condemnation in these six cases."

The NHRC recommended that the International Court of Justice should "remind the UAE to take all necessary steps to comply with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination".

**Annex 29**

“Despite the ICJ Order ... Qatari accounts document Emirati violations”, *Al Jazeera*,  
24 January 2019 (English translation of Arabic original)

## **Despite the ICJ Order ... Qatari accounts document Emirati violations**

Thursday 19/5/1440 H. – 24/1/2019 A.D. (last update) 1 :56 (Makkah Time), 22 :56 (GMT)

Emad Mourad – Doha

The ICJ Order indicating that Qatari students should be given the opportunity to complete their education in the United Arab Emirates constituted the latest glimmer of hope for student “S. A’ . A.” to finalise her studies at the University of Abu Dhabi, or retrieve her academic records, after the blockade imposed on Qatar in June 2017.

But the international order was not a deterrent for the Emirati authorities who maintained the restrictions affecting the student. As a result, she failed to complete her remaining exams in two subjects required for her graduation.

The Qatari student, who refused to reveal her name in fear of further arbitrary [steps] by the Emirati university, has complained about how her repeated requests to complete her studies – the last of which dates back to last August – have been ignored. This has caused her great harm, resulting in her failure to finalise her university studies for two years in violation of her right.

The case of this Qatari student resembles 159 claims by citizens and residents of the State of Qatar who are still unable to access their academic institutions in the absence of a clear mechanism set up by the United Arab Emirates for this purpose. These claims have been documented by the National Human Rights Committee.

### **Numerically documented**

Today, the National [Human Rights] Committee issued a report that documents, with numbers and statements by victims, the failure by the United Arab Emirates to comply with the provisional measures order issued by the International Court of Justice. The Order called for an immediate end to the discriminatory measures affecting the citizens and residents of the State of Qatar.

The Report documents 745 violations of rights of Qatari citizens and residents committed by Emirati authorities by mid-January. This includes cases involving students, mixed-family reunification and ownership six months after the announcement by the Abu Dhabi authorities that they would abide by the ICJ Order.

The information comprised in the report is based mainly on the violations monitored by the National Human Rights Committee from its headquarters since the beginning of the embargo,

through telephone calls [and communications to] the hotline established specifically to monitor the implementation of this resolution or the Committee's e-mail.

The Report highlights the continuing violations by the United Arab Emirates resulting from the unilateral arbitrary measures taken against the State of Qatar even after the ICJ Order. It also provides statistics of the human rights violations resulting from the arbitrary measures taken by the United Arab Emirates against citizens and residents of the State of Qatar.

Of the 745 violations of the fundamental rights covered by the ICJ Order, the Report refers to 505 violations of the right to access to courts (including 498 violations of the right to property and 7 violations of the right to work), followed by 159 violations of the right to education and 87 violations of the right to family reunification.

### **Inciting racism**

Moreover, although the ICJ Order required the parties to stop the escalation of the Gulf crisis and combat prejudices that lead to racial discrimination and promote understanding, tolerance and friendship, the Report monitored an ongoing Emirati escalation as some officials of the United Arab Emirates as well as some media broadcasters continued to spread hate speech against the State of Qatar.

The Report cites a series of provocative and racist comments against the State of Qatar to incite hatred, provoke violence, discredit its leaders and accuse the State of Qatar of terrorism. The Report refers to comments published by a number of officials of the United Arab Emirates including the Deputy Chief of Police and Public Security Dhahi Khalfan, the Ambassador to the Kingdom of Saudi Arabia Shakhbout bin Nahyan, Hamad Al Mazroui, Dr. Abdul Khaliq Abdullah and others.

The Report draws several conclusions, the most important of which is the continued violation by the United Arab Emirates of the most vulnerable groups of women, children, persons with disabilities and the elderly, as well as the continued denial of access to justice for victims, as well as the absence of a clear mechanism for implementing the ICJ Order.

The National Human Rights Committee called on the UN Committee on the Elimination of Racial Discrimination to call upon both parties to establish a joint, clear and transparent review mechanism for all persons affected by the arbitrary measures taken by the United Arab Emirates and to report on their implementation.

**رغم قرار المحكمة الدولية.. قصص قطرية توثق انتهاكات إماراتية**  
الخميس 1440/5/19 هـ - الموافق 24/1/2019 م (آخر تحديث) الساعة 1:56 (مكة المكرمة)، 22:56 (غرينتش)

## عماد مراد-الدوحة

كان قرار **محكمة العدل الدولية** بإتاحة الفرصة للطلاب القطريين لإكمال تعليمهم في دولة **الإمارات** آخر بارقة أمل جديدة للطالبة "ص ع أ" لاستكمال دراستها في جامعة أبو ظبي أو الحصول على سجلاتها التعليمية بعد الحصار الذي فرض على **قطر** في يونيو/حزيران 2017.

لكن القرار الدولي لم يكن رادعا للسلطات الإماراتية التي أبقّت على القيود أمام الطالبة ولم تستطع استكمال ما تبقى لها من اختبارات في مادتين فقط لتتخرج بعد ذلك.

الطالبة القطرية -التي رفضت الكشف عن اسمها خوف المزيد من التعسف من جانب الجامعة الإماراتية- اشتكت من تجاهل طلباتها المتكررة التي كان آخرها في أغسطس/آب الماضي لاستكمال دراستها، مما ألحق بها ضررا كبيرا تجلّى في بقائها عامين دون الحصول على حقها في إنهاء دراستها الجامعية.

حالة الطالبة القطرية تتشابه مع 159 شكوى وثقتها اللجنة الوطنية القطرية لحقوق الإنسان لمواطنين ومقيمين في دولة قطر لا يزالون محرومين من إمكانية وصولهم إلى مؤسساتهم التعليمية لعدم وجود آلية واضحة من قبل الإمارات بهذا الخصوص.

### توثيق بالأرقام

وقد أصدرت اللجنة الوطنية اليوم تقريرا يوثق من خلال الأرقام وشهادات لمتضررين تنصل الإمارات من الالتزام بتنفيذ القرار التحفظي الذي أصدرته محكمة العدل الدولية، ويطالبها بوقف الإجراءات التمييزية بحق المواطنين والمقيمين في دولة قطر فوراً.

التقرير يوثق 745 حالة انتهاك حتى منتصف يناير/كانون الثاني الجاري ارتكبتها السلطات الإماراتية بحق مواطنين ومقيمين في دولة قطر سواء في مجال الطلبة أو لمّ شمل الأسر المشتركة أو الملكية، وذلك بعد ستة أشهر من إعلان سلطات **أبو ظبي** الالتزام بتنفيذ قرار محكمة العدل الدولية.

المعلومات الواردة في التقرير تستند أساسا إلى ما رصدته **اللجنة الوطنية لحقوق الإنسان** من انتهاكات استقبلتها عن طريق مقرها أو عبر المكالمات الهاتفية أو عن طريق الخط الساخن الذي أنشئ خصيصا لمتابعة تنفيذ هذا القرار أو عن طريق البريد الإلكتروني الخاص باللجنة، وذلك منذ بداية الحصار.

ويسلط التقرير الضوء على استمرار الانتهاكات من طرف الإمارات بسبب التدابير التعسفية أحادية الجانب المتخذة ضد دولة قطر حتى بعد صدور قرار محكمة العدل الدولية، كما يرصد أيضا إحصاءات الانتهاكات المتعلقة بحقوق الإنسان بسبب الإجراءات التعسفية المتخذة من طرف الإمارات ضد مواطني ومقيمي دولة قطر.

ومن إجمالي 745 انتهاكا للحقوق الأساسية التي تطرق لها قرار محكمة العدل الدولية يشير التقرير إلى رصد 505 انتهاكات للحق في التقاضي (تشمل 498 انتهاكا للحق في الملكية، و7 انتهاكات للحق في العمل)، ويليها 159 انتهاكا للحق في التعليم، و87 انتهاكا للحق في لمّ الشمل الأسري.

### تحريض عنصري

وعلى الرغم من أن قرار محكمة العدل الدولية ينص على إلزام الطرفين بالكف عن تصعيد **الأزمة الخليجية** ومكافحة التحيزات التي تقضي إلى التمييز العنصري وتعزيز التفاهم والتسامح والصداقة فإن التقرير رصد تصعيدا إماراتيا متواصلا تجلّى في انخراط بعض المسؤولين الرسميين في الإمارات وبعض الإعلاميين ببث خطاب الكراهية ضد دولة قطر.

واستدل التقرير بسلسلة تغريدات تحريضية و**عنصرية** ضد قطر لبث الكراهية والتحريض على العنف وتشويه سمعتها وسمعة قادتها، إلى جانب تغريدات تتهم دولة قطر بالإرهاب نشرها عدد من المسؤولين الإماراتيين يتقدمهم ضاحي خلفان نائب رئيس الشرطة والأمن العام في دولة الإمارات، وسفير دولة الإمارات في المملكة العربية **السعودية** شخبوط بن نهيان، وحمد المزروعى، والدكتور عبد الخالق عبد الله وغيرهم.

وخلص التقرير إلى استنتاجات عدة، أهمها استمرار انتهاك الإمارات للفئات الأولى بالرعاية من النساء والأطفال وذوي الإعاقة وكبار السن، بالإضافة إلى استمرار منع الضحايا من الوصول إلى العدالة، فضلا عن عدم وجود آلية واضحة لتنفيذ قرار محكمة العدل الدولية.

كما طالبت اللجنة القطرية لحقوق الإنسان لجنة القضاء على التمييز العنصري التابعة **للأمم المتحدة** بدعوة كلا الطرفين إلى إنشاء آلية مراجعة مشتركة وواضحة وشفافة لجميع الأشخاص المتأثرين بالتدابير التعسفية التي تتخذها الإمارات وتقديم تقرير عن تنفيذها، داعية أبو ظبي إلى ضرورة الالتزام الفوري بتنفيذ قرار محكمة العدل الدولية.

جميع حقوق النشر محفوظة، الجزيرة 2019

**Annex 30**

*State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, *Note Verbale* from the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) to the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva, 14 December 2018



REFERENCE: ICERD-ISC 2018/2  
AP VL/mg

The Secretariat of the United Nations (Office of the High Commissioner for Human Rights) presents its compliments to the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva, and has the honour to refer to the interstate communication ICERD-ISC-2018/2, which was submitted to the Committee on the Elimination of Racial Discrimination for consideration under article 11 of the Convention on the Elimination of All Forms of Racial Discrimination, by the State of Qatar.

The Secretary-General has the honour to inform the State party of a decision adopted by the Committee on the Elimination of Racial Discrimination during its 97th session held in Geneva from 26 November to 14 December 2018, as follows:

Noting that the State of Qatar sent an interstate communication concerning the United Arab Emirates on 8 March 2018, which was transmitted to the State concerned on 7 May 2018;

Noting that the United Arab Emirates replied to that communication by Notes verbales of 7 August, 7 and 30 November 2018, which were transmitted to the State of Qatar;

Also noting that the State of Qatar submitted observations on the replies of the United Arab Emirates dated 7 August and 7 November 2018 in a note dated 29 November 2018, and that observations were transmitted to the United Arab Emirates;

Being aware that the matter has not been adjusted to the satisfaction of both parties;

Acknowledging that on 29 October 2018, the State of Qatar has referred the matter again to the Committee in accordance with article 11(2) of the Convention;

Decides

1. To request the United Arab Emirates to inform the Committee whether it wishes - within a period of one month after receipt of this request - to supply any



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relevant information on issues of jurisdiction of the Committee or admissibility of the communication, including the exhaustion of all available domestic remedies;

2. That the Secretariat will immediately transmit any reply received to all members of the Committee and to the State of Qatar giving it the opportunity to provide its observations on that reply within one month of receiving it;

3. That both the United Arab Emirates and the State of Qatar may decide to confine their respective replies to the information already contained in their previous notes in which those issues have been raised;

4. To give the United Arab Emirates the opportunity to provide its comments on any observations that may be communicated by the State of Qatar pursuant to operative paragraph 2 above within one month of having received them, without raising any issue not previously raised by either of the States concerned;

5. To invite the States parties concerned to appoint one representative to take part in the proceedings before the Committee, without voting rights, while the matter is under consideration, and to inform the Chairperson of the Committee of that appointment not later than 1 March 2019;

6. To examine any preliminary question at its 98<sup>th</sup> session that will take place from 23 April to 10 May 2019;

7. To invite the appointed representative to present at that session the views of the State party concerned, for a maximum of 45 minutes, and in rebuttal for a further period of 15 minutes.

A copy of the decision has been transmitted to the Permanent Mission of the State of Qatar to the United Nations Office at Geneva.

The Secretariat avails itself of the opportunity to renew to the Permanent Mission of the United Arab Emirates the assurances of its highest consideration.

  
14 December 2018

### **Annex 31**

*State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, *Note Verbale* from the Permanent Mission of the United Arab Emirates to the United Nations Office and Other International Organizations in Geneva to the Secretariat of the Office of the High Commissioner for Human Rights, 14 January 2019, transmitting the Supplemental Response on Issues of Jurisdiction and Admissibility of the United Arab Emirates, 14 January 2019

MISSION PERMANENTE DES  
EMIRATS ARABES UNIS  
GENÈVE



البعثة الدائمة  
للإمارات العربية المتحدة  
جنيف

**Ref: 2/3/32- 21**  
**Date: 14 January 2019**

The Permanent Mission of the United Arab Emirates to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Secretariat of the Office of the High Commissioner for Human Rights and with reference to its letter ICERD-ISC 2018/2 AP/VI/mg dated 14/12/2018, has the honor to forward the reply as received from the competent authorities in the United Arab Emirates.

The Permanent Mission of the United Arab Emirates to the United Nations Office and Other International Organizations in Geneva avails itself of this opportunity to renew to the Secretariat of the Office of the High Commissioner for Human Rights, the assurances of its highest consideration.



A handwritten signature in blue ink, appearing to be 'S. Al-Sayid'.

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*Secretariat of the Office of the High Commissioner for Human Rights*

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**In a matter before the  
Committee on the Elimination of Racial Discrimination**

**ICERD-ISC-2018/2**

**SUPPLEMENTAL RESPONSE ON ISSUES OF  
JURISDICTION AND ADMISSIBILITY**

**of the United Arab Emirates pursuant to the Decision adopted by  
the Committee on the Elimination of All Forms of Racial  
Discrimination during its 97<sup>th</sup> Session  
(26 November – 14 December 2018)**

**to the request made by the State of Qatar  
pursuant to Article 11 of the International Convention on the  
Elimination of all Forms of Racial Discrimination**

**submitted to the Office of the High Commissioner for Human  
Rights, United Nations Office, Geneva, Switzerland on**

**14 January 2019**

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	<u>Page</u>
<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. CONTEXT OF THE DISPUTE AND LACK OF EVIDENCE OF THE ALLEGATIONS .....</b>	<b>3</b>
<b>III. LACK OF JURISDICTION .....</b>	<b>9</b>
A. The CERD Does Not Prohibit Differentiated Treatment Based on Current Nationality .....	9
B. The CERD Committee’s Jurisdiction Extends Only to Current and Ongoing Violations of CERD, Not Allegations of Past Conduct .....	12
<b>IV. LACK OF ADMISSIBILITY .....</b>	<b>14</b>
A. The Committee Must Decline to Hear Qatar’s Article 11 Communication Because Qatar’s Initiation of Parallel Proceedings Undermines the Integrity of the Dispute Resolution Provisions of CERD and of the ICJ .....	14
B. The Committee Must Decline to Hear Qatar’s Article 11 Communication Since the Communication Amounts to No More Than Empty Speculation and Thus Constitutes an Abuse of Rights and Process.....	20
C. The Committee Must Decline to Hear Qatar’s Article 11 Communication Because Qatar Has Failed to Establish that Local Remedies Have Been Invoked or Exhausted Under Article 11(3) of the CERD .....	22
<b>V. CONCLUSION .....</b>	<b>30</b>

## **I. Introduction**

1. The Permanent Mission of the United Arab Emirates (the “**UAE**”) to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) and refers to the Office of the High Commissioner’s Note of 14 December 2018 (ICERD-ISC 2018/2) in which the Office of the High Commissioner transmits a decision taken by the Committee on the Elimination of All Forms of Racial Discrimination (the “**Committee**” or the “**CERD Committee**”) at its 97<sup>th</sup> Session (the “**Decision**”) concerning the Communication under Article 11 of the Convention on the Elimination of All Forms of Racial Discrimination (“**CERD**” or the “**Convention**”), submitted by the State of Qatar (“**Qatar**”) to the Committee on 8 March 2018 (“**Qatar’s Article 11 Communication**”).
2. The Decision requests the UAE to “inform the Committee whether it wishes – within a period of one month after the receipt of this request – to supply any relevant information on issues of jurisdiction of the Committee or admissibility of the communication, including the exhaustion of all available domestic remedies.”<sup>1</sup>
3. In response to the Decision, the UAE has the honour to submit the present Supplemental Response on Issues of Jurisdiction and Admissibility. This submission must be read together with the Response and Supplemental Response submitted by the UAE on 7 August 2018 and on 29 November 2018, respectively, in connection with these CERD Committee proceedings (“**CERD Committee Proceedings**”).
4. In particular, the arguments concerning issues of jurisdiction and admissibility set out in the UAE’s Supplemental Response of 29 November 2018 (the “**29 November 2018 Submission**”) are hereby confirmed. The UAE therefore draws the attention of the Members of the Committee to the arguments set out in the 29 November 2018 Submission, which provide more than sufficient grounds on which the Committee may

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<sup>1</sup> Note from the Secretariat of the United Nations (Office of the High Commissioner for Human Rights), dated 14 December 2018 (ICERD-ISC 2018/2).

proceed to dismiss Qatar’s Article 11 Communication out of hand for lack of jurisdiction and for being inadmissible.

5. In light of the detailed arguments and information set out in the 29 November 2018 Submission, the UAE could have seized the possibility, mentioned in the Committee’s Decision, to state that it wished “to confine” its reply “to the information already contained in [its] previous notes.”<sup>2</sup> It has decided not to do so for two reasons. First, because it considers that it may be of help to the Committee to have at its disposal a synthetic statement of the UAE’s objections to jurisdiction and admissibility, which moreover takes account of additional relevant evidence relating to the past several months.<sup>3</sup> In stark contradiction to the unsupported claims of Qatar, such evidence clearly establishes the continuing freedom of entry to the UAE by Qatari nationals and, importantly in relation to the questions before the Committee, the accessibility of the UAE courts to Qatari nationals. Second, because the UAE considers necessary, for legal and policy reasons, to develop further the arguments concerning the relationship between these CERD Committee Proceedings and those pending before the International Court of Justice (“ICJ” or “Court”) (“**Pending ICJ CERD Proceedings**”). Both proceedings involve the same parties and the same factual allegations and legal arguments.<sup>4</sup>
6. This submission is organized as follows. Section II contains general remarks on the context of the dispute and the fatal lack of evidentiary support for Qatar’s claims. Section III summarizes the UAE’s objections to the Committee’s jurisdiction, adding a number of observations related to recent developments which further reinforce the strength of those objections. Section IV then restates the UAE’s objections to admissibility of Qatar’s claims, including further considerations based on the pending case on the same matter before the ICJ and the lack of exhaustion of local remedies in accordance with Article 11.3 of the Convention. Finally, Section V offers some concluding remarks.

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<sup>2</sup> *Id.*

<sup>3</sup> *See* paras. 8-12, *infra*.

<sup>4</sup> *See* paras. 25-38, *infra*.

## II. Context of the Dispute and Lack of Evidence of the Allegations

### *Qatari Nationals are not Mistreated or Targeted by the UAE*

7. The complaint Qatar has brought before this Committee relates to allegations that the UAE has carried out a series of measures targeting Qatari nationals. As the UAE has explained in two previous submissions, and as it will further elaborate in this submission, those allegations are false. While the UAE has, along with twelve other States, severed or downgraded diplomatic relations with Qatar<sup>5</sup> and, for the reasons stated in paragraphs 14-16 below, taken certain other lawful measures to restrict air transportation, postal service and trade (measures which do not in any case implicate obligations under CERD), it has, since the break in diplomatic relations on 5 June 2017, taken only one measure directly affecting the treatment of Qatari nationals. That one measure was the introduction of minimal, cost-free, requirements on the entry of Qatari nationals into the UAE, essentially requiring that they apply for and obtain approval for such entries. These requirements are less burdensome than a typical entry visa which the UAE requires of nationals of many other States around the world. Prior to the current diplomatic crisis between Qatar and the UAE, Qataris enjoyed visa-free access to the UAE as did members of other neighbouring countries. By revoking these privileges and requiring Qataris to meet minimal entry requirements, the UAE is not violating the rights of Qataris or any

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<sup>5</sup> Egypt, Saudi Arabia, Bahrain, Chad, Comoros, the Maldives, Mauritania, Senegal and Yemen also severed diplomatic ties with Qatar. See Declaration of the Arab Republic of Egypt, 4 June 2017, available at: <http://www.sis.gov.eg/section/7278/7261?lang=en-us#1>, Declaration of the Kingdom of Saudi Arabia, 5 June 2017, available at: <https://www.spa.gov.sa/viewfullstory.php?lang=en&newsid=1637327>, Kingdom of Bahrain Ministry Foreign Affairs News Details, "Statement of the Kingdom of Bahrain on the severance of diplomatic relations with the State of Qatar", 5 June 2017, available at: <https://www.mofa.gov.bh/Default.aspx?tabid=7824&ItemId=7474&language=en-US>, "Chad shuts down Qatar embassy", *Emirates News Agency*, 23 August 2017, available at: <http://wam.ae/en/details/1395302628900>, "Comoros severs diplomatic relations with Qatar", *Saudi Press Agency*, 7 June 2017, available at: <https://www.spa.gov.sa/viewfullstory.php?lang=en&newsid=1638089>, "Statement by the Government of Maldives", *Ministry of Foreign Affairs of the Republic of Maldives*, 5 June 2017, available at: <https://www.foreign.gov.mv/index.php/en/mediacentre/news/3905-statement-by-the-government-of-maldives-3>, "La Mauritanie décide de rompre ses relations diplomatiques avec Qatar", *Agence Mauritanienne d'Information*, 6 June 2017, available at: <http://fr.ami.mr/Depeche-41008.html>, "Senegal, Gabon join boycott of Qatar", *Middle East Monitor*, 9 June 2017, available at: <https://www.middleeastmonitor.com/20170609-senegal-gabon-join-boycott-of-qatar/>, "Yemen cuts diplomatic ties with Qatar: state news agency", *Reuters*, 5 June 2017, available at: <https://www.reuters.com/article/us-gulf-qatar-yemen-idUSKBN18W0RS>. Additionally, Jordan and Niger downgraded diplomatic relations with Qatar. See "Jordan downgrades relations with Qatar and bans Al Jazeera", *The National*, 7 June 2017, available at: <https://www.thenational.ae/world/jordan-downgrades-relations-with-qatar-and-bans-al-jazeera-1.74433>, "Niger recalls ambassador to Qatar", *Khaleej Times*, 10 June 2017, available at: <https://www.khaleejtimes.com/region/qatar-crisis/niger-recalls-ambassador-to-qatar>.

provision of any international instrument, including CERD, but is merely eliminating an advantage it previously extended to one particular nationality. Notably, in *D.F. v. Australia*, where a New Zealand petitioner ceased to enjoy rights exclusively granted by Australia to New Zealanders, this Committee found no violation of CERD, noting that the act implementing the change “did not result in the operation of a distinction but rather in the removal of a distinction which had placed the petitioner and all New Zealand citizens in a more favourable position compared to other non-citizens.”<sup>6</sup>

8. That such cost-free entry requirements are indeed minimal is evidenced by the number of Qatari nationals who have, since 5 June 2017, entered and exited the UAE despite the political difficulties between the two countries. The UAE has submitted uncontested evidence to this Committee and to the ICJ proving that, from 5 June 2017 through June 2018, “Qatari nationals have entered and exited the UAE on over 8,000 occasions”.<sup>7</sup> Updated evidence submitted herewith for the Committee’s consideration demonstrates that from 9 July 2018 through 31 December 2018, 3,563 applications by Qatari nationals were lodged with the UAE authorities for entry permits to the UAE, 3,353 of which were accepted.<sup>8</sup> The actual registered entries and exits of Qatari nationals into and out of the UAE from 1 June 2018 through 31 December 2018 amounted to 2,876.<sup>9</sup>
9. The UAE respectfully requests the Committee to take particular note that at no time, whether in the course of the proceedings before this Committee or in the proceedings

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<sup>6</sup> CERD, Communication No. 39/2006, *D.F. v. Australia*, Opinion of 22 February 2008, UN doc. CERD/C/72/D/39/2006, para. 7.1.

<sup>7</sup> See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Request for the Indication of Provisional Measures: Order, 23 July 2018, Dissenting Opinion of Judge Crawford (“Dissenting Opinion of Judge Crawford”), para. 7, citing to evidence submitted by the UAE in the ICJ proceedings. The same evidence was attached as Annex 5 to the UAE’s Response of 7 August 2018.

<sup>8</sup> **Annex 1**, Letter from the Federal Authority for Identity and Citizenship, dated 10 January 2019, summarizing statistics and attaching detailed records in tables in Excel files regarding those statistics. See, in particular, **Annex 1.2**, [Excel Redacted] Requests for Entry or Exit of Qatari Nationals from 9 July 2018 until 31 December 2018 (Arabic original, English translation).

<sup>9</sup> **Annex 1**, Letter from the Federal Authority for Identity and Citizenship, dated 10 January 2019, summarizing statistics and attaching detailed records in tables in Excel files regarding those statistics. See, in particular, **Annex 1.1**, [Excel Redacted] Entrance and Exit for Qatari Nationals from 1 June 2018 until 31 December 2018 (Arabic original; English translation).

before the ICJ addressing the same factual and legal allegations, has Qatar contested or rebutted this evidence.

10. Neither has Qatar contested nor rebutted the evidence put forward by the UAE demonstrating that Qatari nationals continue to reside freely in the UAE, as clarified by the statement of the UAE Ministry of Foreign Affairs and International Cooperation of 5 July 2018.<sup>10</sup> The documentary evidence submitted by the UAE shows that there are thousands of Qatari nationals that continue to visit and reside in the UAE.<sup>11</sup> As of June 2018, the number of Qataris in the UAE amounted to 2,194.<sup>12</sup> In addition to these figures and those mentioned in paragraph 8 above of Qataris entering or exiting the UAE since the beginning of the crisis in June 2017 until the end of 2018, the UAE Federal Authority for Identity and Citizenship has confirmed that as of 10 January 2019 there are 702 Qatari nationals residing in the UAE who hold UAE identification documents.<sup>13</sup>
11. There is only one conclusion the Committee may reasonably draw from the evidence presented to it, which is that, contrary to the unfounded statements made by Qatar to this Committee, Qatari nationals are free to enter and exit the UAE and are in fact doing so in large numbers. Moreover, Qatari nationals continue residing in the UAE in the same manner as they did before 5 June 2017.

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<sup>10</sup> “An Official Statement by the UAE Ministry of Foreign Affairs and International Cooperation”, 5 July 2018, available at: <https://www.mofa.gov.ae/EN/MediaCenter/News/Pages/05-07-2018-UAE-Statement-of-MoFAIC.aspx> (“The UAE Ministry of Foreign Affairs and International Cooperation wishes to confirm that Qatari citizens already resident in the UAE need not apply for permission to continue residence in the UAE.”).

<sup>11</sup> **Annex 1**, Letter from the Federal Authority for Identity and Citizenship, dated 10 January 2019, summarizing statistics and attaching detailed records in tables in Excel files regarding those statistics. *See also, Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Request for the Indication of Provisional Measures: Verbatim Record of Public Sitting of 28 June 2018, at 10:00 a.m.(CR 2018/13), p. 12, para. 9 (Alnowais).

<sup>12</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Request for the Indication of Provisional Measures: Verbatim Record of Public Sitting of 28 June 2018, at 10:00 a.m. (CR 2018/13), p. 64, para. 27 (Shaw).

<sup>13</sup> **Annex 1**, Letter from the Federal Authority for Identity and Citizenship, dated 10 January 2019, summarizing statistics and attaching detailed records in tables in Excel files regarding those statistics. *See, in particular, Annex 1.3*, [Excel Redacted] Holders of UAE Resident Permits (Arabic Original, English Translation).

12. Other evidence of particular relevance for this Committee which has remained unrebutted by Qatar throughout these CERD Committee Proceedings and the Pending ICJ CERD Proceedings includes that related to:
- a. The unrestricted access Qatari nationals in or outside the UAE have to domestic courts in the UAE. The evidence submitted by the UAE shows that Qatari nationals have appeared as plaintiffs or defendants before the UAE courts hundreds of times since June 2017.<sup>14</sup>
  - b. The number of Qatari nationals in the UAE who have received or are receiving medical treatment at UAE medical facilities. The records show over 300 visits from July 2017 onward by Qatari nationals to hospitals and clinics within the UAE.<sup>15</sup>
  - c. The number of Qatari nationals who are enrolled in UAE educational institutions. On this, a 3 January 2019 letter from the Ministry of Education shows that the number of Qatari students who continue to study in all Emirates and at all levels of study for the academic year 2017/2018 amounts to 477 and for the academic year 2018/2019 this number amounts to 310.<sup>16</sup>
  - d. The number of Qatari nationals who own or are engaged in operating licensed businesses in the UAE;<sup>17</sup> and
  - e. The continuous enjoyment by Qatari nationals of their right to property in the UAE, which is evidenced by their ability to own, purchase, sell and manage real

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<sup>14</sup> See, e.g., UAE's Response of 7 August 2018, Annex 16 (International Judicial Cooperation Department – Ministry of Justice Letter) and Annex 18 (Judicial Records). **Annex 2**, Statement of the cases involving a Qatari citizen and being examined by the UAE courts in the period 6 June 2017 until 25 September 2018. These statistics are broken down by the Federal Courts and in some cases they contain information on the courts of some of the emirates.

<sup>15</sup> UAE's Response of 7 August 2018, para. 44, citing to Annex 8 "Health – Qataris with Daman Health Insurance", pp. 13-19.

<sup>16</sup> **Annex 3**, Letter from the Ministry of Education to the Ministry of Foreign Affairs and International Cooperation, dated 3 January 2019. See also, UAE's Response of 7 August 2018, para. 51, citing to Annex 11 (Immigration - Student Entry Records) and Annex 12 (Qatari Student Records).

<sup>17</sup> UAE's Response of 7 August 2018, paras. 52-54, citing to Annex 4 (Part 1 Report of Abu Dhabi police on Hotline, Real Estate, Funds, Licenses and Immigration, p. 14) and Annex 13 (Commercial Licenses – Sample Materials).

estate in the UAE, including through the execution of powers of attorney.<sup>18</sup> Regarding powers of attorney, statistics of the Federal Court in the period 6 June 2017 to 25 September 2018 indicate that there were 146 powers of attorney granted by Qatari citizens.<sup>19</sup>

13. Again, the UAE respectfully calls upon the Committee to take due notice that Qatar has not contested this empirical evidence with anything other than unsupported and sensationalized vitriol.<sup>20</sup> Qatar's silence in the face of the facts and its inability to reply in any coherent or direct manner to the evidence submitted by the UAE confirms that Qatar's allegations before this Committee of mistreatment of Qatari nationals by the UAE are false.

*Qatar's Support for Extremist Violence and Terrorism Caused the Gulf Crisis*

14. In its previous two submissions, the UAE also asked the Committee to consider that the lawful measures taken by the UAE on 5 June 2017 did not occur in a vacuum. The context is the persistent and pernicious support by Qatar for extremist and terrorist groups targeting ethnic and religious minorities, established governments and regional stability. This conduct led in 2013 and 2014 to the conclusion of a series of agreements among the Gulf States, including Qatar (the "**Riyadh Agreements**"<sup>21</sup>) under which Qatar agreed to

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<sup>18</sup> UAE's Response of 7 August 2018, paras. 55-57, citing to Annex 14 (Business – UAE Embassy – Authentication Records, pp. 19-25), Annex 15 (Power of Attorney) and Annex 16 (International Judicial Cooperation Department – Ministry of Justice Letter).

<sup>19</sup> **Annex 2**, Statement of the cases involving a Qatari citizen and being examined by the UAE courts in the period 6 June 2017 until 25 September 2018, p. 2.

<sup>20</sup> See, e.g., *Note Verbale* of Qatar to the CERD Committee, dated 29 October 2018, requesting the Committee to re-initiate Qatar's complaint against the UAE, in which Qatar states, without any support whatsoever, that "It is equally clear that Qataris do not have domestic remedies to invoke or exhaust in the United Arab Emirates. Any nominal remedies are either unavailable or ineffective in light of the expulsion of Qataris from the United Arab Emirates and ensuing travel restrictions, as well as the ongoing campaign of hatred against Qatar and Qataris in the territory of the United Arab Emirates." No reference is made in this unsupported and outrageous statement to the documented ease of access to the UAE and its courts by Qatari nationals.

<sup>21</sup> First Riyadh Agreement, 23 and 24 November 2013, United Nations Registration Number 55378 ("First Riyadh Agreement"); Mechanism Implementing the Riyadh Agreement, 17 April 2014, United Nations Registration Number 55378 ("Mechanism Implementing the Riyadh Agreement"); Supplementary Riyadh Agreement, 16 November 2014, United Nations Registration Number 55378 ("Supplementary Riyadh Agreement"). The Parties to the Riyadh Agreements are: the UAE, Qatar, Bahrain, Kuwait, Oman and Saudi Arabia.

cease support for such groups and to stop the promotion of hate speech, including through its state-owned media outlets such as Al-Jazeera Arabic.<sup>22</sup>

15. The very existence of the Riyadh Agreements, and Qatar's signing up to them, is in itself sufficient proof that Qatar was engaging in the vile behaviour those agreements were intended to bring to an end; indeed, it is an admission by Qatar of that behaviour. Moreover, there is no dearth of other evidence of Qatar's support for groups engaged in extremist violence, both before and after the conclusion of the Riyadh Agreements. The UAE brought this to the Committee's attention in summary fashion in its previous submissions. The UAE further noted that Qatar's violation of the Riyadh Agreements is what directly led to the break in diplomatic relations between numerous States, including the UAE, and Qatar on or about 5 June 2017, as well as to the other measures then taken.<sup>23</sup> Indeed, these events were foreshadowed by the Riyadh Agreements themselves, which provided that in the event any signatory were to violate them, "the other GCC Countries shall have the right to take any appropriate action to protect their security and stability."<sup>24</sup>
16. This context is relevant to the Committee's consideration of this matter not only because it is important that the Members of the Committee appreciate the true nature and character of the Qatari government's actions, but also because it helps explain why Qatar has been prepared to advance outright falsehoods in pursuing its aggressive campaign of legal actions alleging all manner of international responsibility against the UAE, including before this Committee. The answer is abundantly clear. It is through such falsehoods and exaggerations that Qatar seeks to distract attention and cover its own responsibility for its reprehensible behavior.

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<sup>22</sup> Pursuant to the Riyadh Agreements, Qatar expressly undertook not to support "the Muslim Brotherhood or any organizations, groups or individuals that threaten the security of the [GCC] states" or any type of "antagonistic media". First Riyadh Agreement, Articles 1 and 2. Qatar further undertook not to "give refuge, employ, or support [...] any person or a media apparatus that harbours inclinations harmful to any [GCC] state". Supplementary Riyadh Agreement, Article 3(c). The Riyadh Agreements also expressly referred to Qatar's State-owned and controlled news network Al Jazeera. Supplementary Riyadh Agreement, Article 3(d).

<sup>23</sup> UAE's Response of 7 August 2018, paras. 8-10; UAE's Supplemental Response of 29 November 2018, paras. 10-12.

<sup>24</sup> Mechanism Implementing the Riyadh Agreement, p. 3 ("Thirdly: Compliance Procedures, 3. With regards to the internal security of the GCC Countries").

### III. Lack of Jurisdiction

17. The Committee's attention has previously been drawn to at least two jurisdictional grounds on which Qatar's Article 11 Communication should be rejected. These are (i) Qatar's Article 11 Communication goes only to differentiated treatment on the basis of nationality, a matter falling wholly outside the scope of the CERD; and (ii) the dispute resolution procedure under Articles 11 to 13 of the CERD is strictly confined to ongoing alleged breaches of the CERD, which under any view of the facts of this dispute are not present.

#### A. The CERD Does Not Prohibit Differentiated Treatment Based on Current Nationality

18. As elaborated in greater detail in the UAE's 29 November 2018 Submission, Qatar's complaint before the CERD Committee is entirely based on alleged differentiated treatment by the UAE of persons having Qatari nationality.<sup>25</sup> While the UAE has provided overwhelming and unrebutted evidence to the Committee that it has not imposed such differentiated treatment on Qatari nationals and that Qatari nationals enjoy the same or better rights in the UAE as persons of other non-UAE nationalities, the definition of racial discrimination under Article 1 of the CERD, and thus the protections provided under the Convention, do not in any case extend to distinctions based on current nationality.<sup>26</sup> Therefore, any such distinctions, even if they were to exist (*quod non*), do not involve rights protected by the CERD and could not provide a basis on which to lodge a complaint with the CERD Committee. For the same reason, and because the CERD Committee's jurisdiction extends only to circumstances in which a State Party "is not giving effect to the provisions of this Convention"<sup>27</sup>, the Committee has no jurisdiction to entertain the dispute or to progress it to an *ad hoc* Conciliation Commission as that "dispute" simply does not relate to the provisions of the Convention.

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<sup>25</sup> UAE's Supplemental Response of 29 November 2018, paras. 30-45.

<sup>26</sup> *Id.*

<sup>27</sup> Convention on the Elimination of All Forms of Racial Discrimination, Article 11(1).

19. While the ICJ in the Order for provisional measures rendered on 23 July 2018 deferred the “question whether the expression ‘national . . . origin’ mentioned in Article 1, paragraph 1, of CERD, encompasses discrimination based on the ‘present nationality’ of the individual”, holding that the Court “need not decide . . . which of these diverging interpretations of the Convention is the correct one,”<sup>28</sup> it should be noted that not a single judge pronounced his or her support for Qatar’s inclusion of current nationality as a prohibited basis of differentiated treatment under the CERD.
20. On the contrary, a number of eminent judges whole-heartedly supported the opposite and self-evident conclusion that nationality, as a basis for differentiated treatment, is not proscribed by the CERD. These include Judges Tomka, Gaja, Gevorgian, Crawford and Salam, whose reasoned views on this important issue, quoted below at length, the UAE respectfully urges the Committee to adopt:
- a) Judges Tomka, Gaja and Gevorgian stated in a Joint Declaration that: “When the Convention considers ‘national origin’ as one of the prohibited bases for discrimination, it does not refer to nationality. In our view, the two terms are not identical and should not be understood as synonymous. The *travaux préparatoires* support this view and indicate that States sought to exclude distinction on the basis of nationality from the scope of CERD. . . The omission of a reference to nationality may be easily explained. Should CERD be considered as covering also discrimination based on nationality, the Convention would be a far-reaching instrument, that contains a clause providing that, with regard to the wide array of civil rights that are protected under CERD, all foreigners must be treated by the host State in the same way as nationals of the State who enjoy the most favourable treatment.”<sup>29</sup>

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<sup>28</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Qatar v. United Arab Emirates), Request for the Indication of Provisional Measures: Order, 23 July 2018, para. 27.

<sup>29</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Qatar v. United Arab Emirates), Request for the Indication of Provisional Measures: Order, 23 July 2018, Joint Declaration of Judges Tomka, Gaja and Gevorgian, para. 4.

- b) Judge Crawford stated that the “legal difficulty” with Qatar’s request for provisional measures “is that Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) distinguishes on its face between discrimination on grounds of national origin (equated to racial discrimination and prohibited per se) and differentiation on grounds of nationality (not prohibited as such). Moreover, that distinction finds its reflection in widespread State practice giving preferences to nationals of some countries over others in matters such as the rights to enter or to reside, entitlement to social security, university fees and many other things, in peace and during armed conflict.”<sup>30</sup>
- c) Judge Salam stated that “the terms ‘national or ethnic origin’ used in the Convention differ in their ordinary meaning to the term nationality. ... The aim of CERD is thus to bring an end, in the decolonization and post-decolonization period, to all manifestations and governmental policies of discrimination based on racial superiority or hatred; it does not concern questions relating to nationality. . . This question of the distinction between ‘nationality’ and ‘national origin’ should not, in my view, admit of any confusion. They are two different notions. An example that clearly illustrates this difference is the well-known case of American citizens of Japanese origin who were incarcerated following the attack on Pearl Harbor during the Second World War. Despite having American nationality, these citizens were subject to racial discrimination based on their ‘national origin’, not their nationality, and were rounded up and held in ‘War Relocation Camps’. A similar type of discrimination based on ‘national origin’ also affected a large number of individuals of German origin, *regardless of their nationality at that time*, in several countries after both the First and Second World Wars. I would also point out that the distinction to be drawn between ‘nationality’ and ‘national origin’ is confirmed by the *travaux préparatoires* of CERD, particularly the proposed amendments to the wording of Article 1. In any event, had States wanted to say ‘nationality’ rather than ‘national origin’ in Article

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<sup>30</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Request for the Indication of Provisional Measures: Order, 23 July 2018, Dissenting Opinion of Judge Crawford, para. 1.

1 of CERD, they could have done so. Likewise, they could have used the wording ‘nationality and national origin’ had they intended to include both categories, which they did not do.”<sup>31</sup>

21. The UAE respectfully submits that the Committee should follow the sound reasoning supporting the views of these eminent ICJ judges.

**B. The CERD Committee’s Jurisdiction Extends Only to Current and Ongoing Violations of CERD, Not Allegations of Past Conduct**

22. As elaborated in greater detail in the 29 November 2018 Submission, under Article 11 of the Convention, the jurisdiction of the Committee extends exclusively to allegations of ongoing and current conduct, rather than retrospective dispute resolution.<sup>32</sup> This is clear from the ordinary meaning of the terms of Article 11, which permits a State Party to refer a matter to the Committee when another State Party “is not giving effect” to the provisions of the Convention (emphasis added). This interpretation is confirmed when reading Article 11 in its context and in the light of its object and purpose. The only remedy envisaged in the CERD for the inter-State procedure is the facilitated negotiated amicable resolution of the situation. It must therefore be for the State submitting a complaint to make a credible case that there is a situation to resolve.
23. Qatar has failed to do so. It has not provided the Committee with any probative evidence of any ongoing conduct by the UAE even arguably in violation of the Convention. Indeed, even as of the time of the ICJ hearing on provisional measures in June 2018 a number of judges noted the lack of evidence of any allegations of continuing effects on Qatari nationals since the break in diplomatic relations between the UAE and Qatar.<sup>33</sup> Just as importantly, Qatar has not provided to the Committee any proof to contest or rebut

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<sup>31</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Request for the Indication of Provisional Measures: Order, 23 July 2018, Dissenting Opinion of Judge Salam, paras. 3(c), 5, 6, 7.

<sup>32</sup> UAE’s Supplemental Response of 29 November 2018, paras. 46-53.

<sup>33</sup> *See, e.g.*, Dissenting Opinion of Judge Crawford, para. 9 (“It is not clear from the evidence that individuals are continuing to suffer these consequences in July 2018. Most of the reports by national and international human rights organizations submitted by Qatar relate to the period June to August 2017.”); Dissenting Opinion of Judge Bhandari, para. 3.

the evidence which the UAE has submitted to this Committee demonstrating that the treatment afforded to Qatari nationals in the UAE at present (including with respect to entry and exit from the country, residence, health care, education, property ownership, conducting business affairs and access to judicial tribunals) reflects no hint of mistreatment or discrimination.<sup>34</sup>

24. The information provided by Qatar in support of its complaint is generalized, exaggerated and outdated. It is noteworthy that the numerous publications issued by Qatar's National Human Rights Committee (the "NHRC") since June 2018 on the alleged effects of the break in relations between the UAE and Qatar essentially restate the same anonymous claims previously included in other NHRC reports.<sup>35</sup> Certainly, none of the information relied upon by Qatar is capable of demonstrating anything near a "campaign of hatred against Qatar and Qataris in the territory of the United Arab Emirates".<sup>36</sup>
25. Under these circumstances, the claims of "coercive measures" supposedly being inflicted by the UAE on Qatari nationals in a continuing "campaign of hatred" disingenuously advanced by Qatar lack all credibility. The UAE respectfully submits that the Committee therefore has no reasonable evidentiary basis on which to consider that any allegations of violations of the Convention by the UAE may be ongoing. It would therefore be

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<sup>34</sup> See paras. 7-13, *supra*.

<sup>35</sup> The UAE notes that the website of the Qatari National Human Rights Committee ("NHRC") includes in its section entitled "Publications" a series of 9 short reports each entitled "Effects of the Blockade on" a specific human right, such as "the right to litigation", "the right to private property", "the right to family reunification", "the right of education", "the right to freedom of movement and residence", amongst others. See Qatar's National Human Rights Committee, Publications, available at: <http://nhrc-qa.org/en/publications/nhrc-publications/>. These reports are pamphlets that contain information with statistics as of 25 April 2018 and that merely restate the information contained in the five NHRC reports that Qatar submitted to the ICJ. One such example is the NHRC's report on "Effects of the Blockade on the right to litigation", which mentions the case of the two Qatari brothers "Mr. B. Th. And Mr. A. M." and their alleged inability to access their inheritance in the UAE. This same case was relied upon by Qatar before the ICJ and the only evidence cited for it was the NHRC's Report of December 2017. See NHRC, *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*, 5 Dec. 2017, p. 19. See also, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Qatar v. United Arab Emirates), Request for the Indication of Provisional Measures: Verbatim Record of Public Sitting of 27 June 2018, at 10:00 a.m. (CR 2018/12), p. 44, para. 44 (Amiramar); Verbatim Record of Public Sitting of 29 June 2018 at 4:30 p.m. (CR 2018/15), p. 29, para. 12 (Buderi).

<sup>36</sup> *Note Verbale* of Qatar to the CERD Committee, dated 29 October 2018 (referring its dispute once again to the Committee under Article 11 of the International Convention on the Elimination of all Forms of Racial Discrimination).

inappropriate for the Committee to proceed to entertain Qatar's request any further or to refer it to a Conciliation Commission under Articles 11-13 of the CERD. Indeed, rather than entertaining such unsubstantiated claims, the Committee would be fully justified in issuing a rebuke to Qatar for pursuing them when they so obviously lack any factual basis.

#### **IV. Lack of Admissibility**

26. In its previous submissions, the UAE has pointed to three grounds on which Qatar's Article 11 Communication should be dismissed for reasons of admissibility. These grounds are summarized below, along with some additional considerations which the Committee should take into account.

##### **A. The Committee Must Decline to Hear Qatar's Article 11 Communication Because Qatar's Initiation of Parallel Proceedings Undermines the Integrity of the Dispute Resolution Provisions of CERD and of the ICJ**

27. Article 22 of the CERD provides:

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

28. It is clear from the ordinary meaning of the terms of this provision that the CERD envisages that the treaty-specific dispute resolution mechanism it offers to its States Parties (*i.e.*, resort to the CERD Committee under Article 11) should be explored and exhausted before escalating to an ICJ process. Unlike other treaties, the CERD dispute resolution provisions do not provide that a State Party may seize the ICJ of the dispute or seek provisional measures from the ICJ while the other methods of dispute settlement under the CERD are being pursued.<sup>37</sup> The Court has confirmed the linear nature of

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<sup>37</sup> *Cf.* with respect to other permanent international tribunals, *see e.g.*, United Nations Convention on the Law of the Sea of 10 December 1982, Article 290, which provides that in certain situations, “[p]ending the constitution of an arbitral tribunal to which a dispute is being submitted, the International Tribunal for the Law of the Sea . . . may prescribe, modify or revoke provisional measures in accordance with this article if it considers that *prima facie* the

dispute resolution under the CERD by holding that the lack of settlement by negotiations or by the procedures expressly set out in the CERD are “procedural preconditions to be met before the seisin of the Court.”<sup>38</sup>

29. This holding by the ICJ confirms that Qatar was legally obliged to exhaust the procedures expressly provided in the CERD “before the seisin of the Court”. The ordinary meaning of the term “precondition” confirms that much.
30. However, Qatar submitted the matter for the consideration of the ICJ on 11 June 2018 while the CERD Article 11 process it had started by its Communication of 8 March 2018 was still underway. In fact, that process had not even properly commenced. It is unquestionable that the two proceedings relate to the same factual situation, concern the same alleged violations and apply the same international legal framework. A comparison between the Qatari Communication submitted pursuant to Article 11 of the CERD on 8 March 2018, and communicated to the UAE on 7 May 2018, and the Qatari Application instituting proceedings before the ICJ on 11 June of the same year confirms this overlap.<sup>39</sup> After making its initial Article 11 Communication to the Committee, Qatar rushed to make its application to the ICJ.<sup>40</sup> Having done so, and having seized the Court of the same dispute which is in front of this Committee, on 29 October 2018<sup>41</sup> after the setting up of the procedural calendar on the merits by the Court,<sup>42</sup> Qatar came back to the

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tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires.” See also, American Convention on Human Rights of 22 November 1969, Article 63.2, which provides for the power of the Inter-American Court of Human Rights to indicate provisional measures and allows for this power to be exercised at the request of the Inter-American Commission “[w]ith respect to a case not yet submitted to the Court.”

<sup>38</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, para. 29, confirming *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), p. 128, para. 141.

<sup>39</sup> See Communication Submitted Pursuant to Article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination, Qatar v. United Arab Emirates, dated 8 March 2018; International Court of Justice, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Qatar v. United Arab Emirates), Application Instituting Proceedings, 11 June 2018.

<sup>40</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Qatar v. United Arab Emirates), Application instituting proceedings, 11 June 2018.

<sup>41</sup> *Note Verbale* of Qatar to the CERD Committee, dated 29 October 2018 (referring again to the Committee Qatar’s complaint against the UAE).

<sup>42</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Qatar v. United Arab Emirates), Order of 25 July 2018, Fixing of Time Limits: Memorial and Counter-Memorial.

Committee in order to seek to resume the very process it had previously bypassed in favour of the ICJ.

31. Through its actions, Qatar has created a *lis pendens* situation, where two parallel proceedings bearing on the exact same dispute between the same parties are progressing simultaneously. By its conduct of concurrently bringing and pursuing identical proceedings before the CERD Committee and the ICJ, Qatar has acted against the principle of avoidance of duplicative litigation. Case law and scholarly writing has warned against the dangers and disadvantages of duplicative litigation tactics such as the one employed by Qatar:

- The Permanent Court of International Justice in *Polish Upper Silesia* explained that the object of the “doctrine of *lis pendence*” is “to prevent the possibility of conflicting judgments.”<sup>43</sup>
- Yuval Shany: “Such duplicative practices draw heavily on scarce judicial resources, carry the risk of legal havoc, which might be caused by inconsistent decisions, and place an undue burden on some or all of the parties due to increased litigation expenses and reduced legal certainty . . . The co-existence of two or more simultaneous proceedings before different fora places an unusually heavy burden on the parties to litigation, which are required to maintain two legal teams or shuttle between two or more tribunals. It also entails the investment of unnecessarily duplicative judicial time and resources by courts and tribunals that are faced with similar (if not identical) tasks and yet are unable to rely on the work of each other.”<sup>44</sup>

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<sup>43</sup> *German Interests in Polish Upper Silesia* (Germany v. Poland), 1925 P.C.I.J. (ser. A) No. 6 (Aug. 25), p. 20.

<sup>44</sup> Yuval Shany, *The Competing Jurisdictions of International Courts and Tribunals* (Oxford University Press 2003), pp. 155-156.

- Campbell McLachlan: “[T]here is widespread acceptance that duplicative litigation within the same legal system is not permitted, as being contrary to due process and the Rule of Law. . . The proposition that the avoidance of duplicative litigation is a general principle of law gains further powerful support from the 2004 Resolution of the Institut de Droit International. . .

Furthermore, the application of a general principle of the avoidance of duplicative litigation gains force from its close connection . . . with the doctrine of *res judicata*. . . .

[T]he avoidance of the risk of inconsistent judgments is one of the reasons commonly advanced for both the doctrine of *res judicata* and the doctrine of *lis pendens*.<sup>45</sup>

32. Similarly, by prosecuting these two procedures simultaneously, Qatar violates the principle of *electa una via non datur recursus ad alteram* (“when one way has been chosen, no recourse is given to another”), sometimes known as the principle of election:

The choice of a specific forum can be perceived as indicative of the intent to resolve the dispute in the selected forum to the exclusion of all alternative fora. This means that a party is estopped from initiating parallel proceedings or relitigating a settled case if the first-in-time forum was seized on his or her initiative (or with that party’s approval).<sup>46</sup>

33. By failing to respect this principle, Qatar is abusing the CERD complaints mechanism process and its rights under the CERD. It is pursuing in parallel the very same CERD complaint against the UAE before two mutually exclusive *fora*. This is in direct violation of the hierarchical and linear dispute resolution architecture of the CERD, and moreover may entangle the Court and the CERD Committee in conflicting interpretations of the same CERD provisions in connection with the same dispute and at the same time.

34. The need to avoid conflicting interpretations should be a sufficient argument<sup>47</sup> to justify a decision of the CERD Committee declaring Qatar’s Article 11 Communication

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<sup>45</sup> Campbell McLachlan, “Lis Pendens in International Litigation”, *Collected Courses of The Hague Academy of International Law*, Vol. 336 (2009), pp. 461-463.

<sup>46</sup> Yuval Shany, *The Competing Jurisdictions of International Courts and Tribunals* (Oxford University Press 2003), p. 23.

<sup>47</sup> See para. 31, *supra*, citing to Campbell McLachlan, “Lis Pendens in International Litigation”, *Collected Courses of The Hague Academy of International Law*, Vol. 336 (2009), pp. 461-463.

inadmissible. In situations of *lis pendens*, other international courts and tribunals have been very sensitive to the risk generated by parallel proceedings. For example, the Arbitral Tribunal established on the basis of Annex VII to the UN Law of the Sea Convention for the settlement of the *MOX Plant* dispute between Ireland and the United Kingdom invoked “considerations of mutual respect and comity which should prevail between judicial institutions”<sup>48</sup> as a basis for suspending its proceedings while awaiting a decision of the European Court of Justice on the question whether the European Community had exclusive or partial competence on matters dealt with by certain provisions of the Law of the Sea Convention.<sup>49</sup> When making its decision suspending the proceedings, the Arbitral Tribunal also stressed that “a procedure that might result in two conflicting decisions on the same issue would not be helpful to the resolution of the dispute between the Parties.”<sup>50</sup>

35. There is another argument in support of the same conclusion that the Committee, it is respectfully suggested, should not fail to consider. If the Committee were to declare Qatar’s Article 11 Communication admissible, the architecture of the CERD system for the settlement of disputes would be compromised. It would no longer be a linear and incremental dispute resolution procedure. The clear hierarchical structure set out in the CERD under which the proceedings before the CERD Committee are “preconditions” of and, therefore, must precede those before the Court would be replaced by a confusing uncoordinated set of possibilities for engagement of whatever procedure would seem at a given moment the most convenient.

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<sup>48</sup> *MOX Plant Case* (Ireland v. United Kingdom), Order No. 3, Suspension of Proceedings on Jurisdiction and Merits, and Request for Further Provisional Measures, 24 June 2003, available at in [www.pca-cpa.org](http://www.pca-cpa.org), para. 28.

<sup>49</sup> *Id.*, para. 29.

<sup>50</sup> *Id.*, para. 28. The case brought in connection to the *MOX Plant* dispute by the European Commission against Ireland was later decided on 30 May 2006 by the European Court of Justice, affirming the exclusive competence of that very court on the basis of the obligation of EU Member States not to submit any disputes concerning the EU treaties to any method of dispute settlement other than those provided for in the EU treaties (Article 292 of the EEC treaty, now Article 344 of the TFEU). Case C-459-03, *Commission of the European Communities v. Ireland*, Judgment of the Court (Grand Chamber), dated 30 May 2006. Subsequently to the decision of the European Court of Justice, Ireland notified the Arbitral Tribunal of the withdrawal of its claim made against the United Kingdom and the Arbitral Tribunal took note of the discontinuance of the case. *MOX Plant Case* (Ireland v. United Kingdom), Order No. 6, Termination of Proceedings, 6 June 2006, available at in [www.pca-cpa.org](http://www.pca-cpa.org).

36. To continue in parallel would not only jeopardise the integrity of the system and risk resulting in fragmented jurisprudence. It would also wreak irreparable harm on the procedural rights of the UAE, which would be required to simultaneously defend itself against the same allegations in two overlapping and parallel procedures.
37. This would be in contradiction with the principle of the equality of the parties. Indeed, the ICJ has emphasized that: “[t]he principle of equality of the parties follows from the requirements of good administration of justice”<sup>51</sup>; that “the equality of the parties to the dispute must remain the basic principle for the Court”<sup>52</sup>; and that
- equality of the parties must be preserved when they are involved, pursuant to Article 2, paragraph 3, of the Charter, in the process of settling an international dispute by peaceful means.<sup>53</sup>
38. There cannot be equality of the parties when Qatar has unilaterally taken for itself two opportunities to litigate against the UAE in overlapping and parallel proceedings.
39. As the defending Party, the burden of the duplicative litigation and the negative consequences of the improper advantage Qatar has taken for itself, fall disproportionately on the UAE. To the extent that procedural steps in Qatar’s Article 11 Communication proceedings under CERD precede those in the case before the ICJ, the UAE will be forced to choose between forsaking its rights to mount a full defence in the present CERD communication procedure or sacrificing its right to procedural equality in the ICJ case. Qatar will be afforded the wholly improper opportunity to foresee and undermine the UAE’s litigation strategy, by taking responsive steps in the case before the ICJ.
40. The UAE respectfully invites the Committee to consider the broader implications to its legitimacy that are embedded in Qatar’s conduct. Qatar’s attempts at forum-shopping in

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<sup>51</sup> *Judgments of the Administrative Tribunal of the I.L.O. upon complaints made against the U.N.E.S.C.O.*, Advisory Opinion of October 23rd, 1956, I.C.J. Reports 1956, p. 86, repeated in *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development*, Advisory Opinion, 1 February 2012, I.C.J. Reports 2012, para. 44.

<sup>52</sup> *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), Merits, Judgment of 27 June 1986, I.C.J. Reports 1986, para. 31.

<sup>53</sup> *Questions relating to the Seizure and Detention of Certain Documents and Data* (Timor-Leste v. Australia), Request for the Indication of Provisional Measures: Order of 3 March 2014, I.C.J. Reports 2014, para. 27.

seeking to avoid the lawful responses to its blatant disregard for the security and stability in the Gulf region jeopardises the integrity of the system and risks resulting in fragmented jurisprudence. If the Committee were to allow the present Article 11 Communication procedure to continue – notwithstanding that the ICJ is presently seised of the very same dispute (as a result of Qatar’s improper and extra-jurisdictional application to it), between the very same parties and commenced under the very same instrument – it would cause the breakdown of the legitimate institutions established by the CERD and make a mockery of both the CERD dispute resolution mechanism’s systemic integrity and the procedural rights of the UAE.

41. Given that Qatar has abandoned the present process by commencing the Pending ICJ CERD Proceedings, the Committee must now yield to the ICJ procedure, in which Qatar is currently preparing its memorial on the merits. It would be inappropriate for the Committee to proceed in parallel at a time when the ICJ, as the pre-eminent World Court in the United Nations system, remains seised of the very same question in the Pending ICJ CERD Proceedings. With respect, the CERD Committee, as a United Nations Treaty body, should not act in any way to undermine the integrity of the Court.

**B. The Committee Must Decline to Hear Qatar’s Article 11 Communication Since the Communication Amounts to No More Than Empty Speculation and Thus Constitutes an Abuse of Rights and Process**

42. As demonstrated in the UAE’s previous responses, as well as in this submission,<sup>54</sup> Qatar has failed, despite many opportunities to do so, to present probative evidence of any ongoing discrimination by the UAE against Qatari nationals – still less, any discrimination actually falling within the scope of the CERD on the basis of race, colour, descent or national or ethnic origin as required under Article 1(1) of the Convention. Indeed, Qatar cannot produce any evidence as its allegations are without foundation both in fact and in law. Qatar’s Article 11 Communication cannot be deemed admissible within the CERD complaints mechanism because it amounts to no more than unsupported allegations and abuse of process.

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<sup>54</sup> See paras. 7-13, *supra*.

43. Allegations that are completely without merit on fact and law should not be further entertained under Article 11 of the CERD, still less under the further procedures under Articles 12 and 13. In particular, empty allegations with no basis in law or fact cannot be used as a basis for the establishment of any Article 12 Conciliation Commission and should be preliminarily dismissed. Although the Conciliation Commission is not a judicial body but a fact-finding body, its findings may result in reputational damage to the responding State. Moreover, as already stated, the proceedings before a Conciliation Commission will require that the UAE put forward defensive arguments which may jeopardize its strategy before the ICJ and may result in findings that may be in contradiction with those the ICJ might ascertain.
44. Nothing in the ICJ's CERD Provisional Measures Order runs contrary to this position. This is because the ICJ in the Pending ICJ CERD Proceedings has thus far evaluated Qatar's allegations only against the lower threshold of "plausibility", relevant to the provisional measures stage.<sup>55</sup> As pointed out by Judge Crawford, the Court failed to identify any evidence to support the further statement that the situation of Qataris residing in the UAE prior to 5 June 2017 appears to remain vulnerable with regard to their rights under Article 5 of the CERD.<sup>56</sup> Most importantly, as also indicated by Judge Crawford, the Court failed to mention the UAE's Statement of 5 July 2018.<sup>57</sup>
45. By submitting a self-serving application unsupported by evidence, Qatar abuses its rights to resort to the process under Article 11 of the CERD. If allowed, Qatar may manage to force the UAE to submit to a redundant fact-finding procedure that will amount to nothing more than an opportunity for Qatar to engage in further public relations theatrics.

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<sup>55</sup> See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Qatar v. United Arab Emirates), Request for the Indication of Provisional Measures: Order of 23 July 2018, para. 44: "At this stage of the proceedings, the Court, however, is not called upon to determine definitively whether the rights which Qatar wishes to see protected exist; it need only decide whether the rights claimed by Qatar on the merits, and for which it is seeking protection, are plausible. Moreover, a link must exist between the rights whose protection is sought and the provisional measures being requested." The "plausibility" threshold is described by Judge *ad hoc* Cot as "fairly low", see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Qatar v. United Arab Emirates), Request for the Indication of Provisional Measures, Dissenting Opinion of Judge *ad hoc* Cot, para. 5.

<sup>56</sup> Dissenting Opinion of Judge Crawford, para. 14.

<sup>57</sup> *Id.*

This is not what the dispute resolution mechanisms of the CERD was intended to achieve.

46. It would be consistent with a good faith interpretation of the CERD in light of its object and purpose, as provided for in Article 31 of the Vienna Convention on the Law of Treaties,<sup>58</sup> to require of Qatar to have proved a genuine case to answer before progressing the matter to an *ad hoc* Conciliation Commission. Otherwise, the Committee will expose the CERD procedure to the risk of abuse of process by Qatar. The Committee is respectfully urged to prevent such abuse by dismissing Qatar's Article 11 Communication as inadmissible. In this respect, the Committee is reminded of its *compétence de la compétence* under public international law and its role, assigned to it under Article 11(3), to ensure that the CERD complaints mechanism is not burdened by claims that do not meet the fundamental criteria of admissibility.

**C. The Committee Must Decline to Hear Qatar's Article 11 Communication Because Qatar Has Failed to Establish that Local Remedies Have Been Invoked or Exhausted Under Article 11(3) of the CERD**

47. The Committee should declare inadmissible Qatar's Article 11 Communication because Qatar has failed to establish that any Qatari nationals who have allegedly been aggrieved by some action of the UAE in violation of CERD have invoked, let alone exhausted, any available and effective domestic remedies in the UAE as required under Article 11.3 of the CERD. The exhaustion of local remedies is a necessary precondition for consideration by the Committee of a matter referred to it in accordance with Article 11(2). Article 11(3) provides that:

[t]he Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged. (Emphasis added.)

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<sup>58</sup> Oliver Dörr and Kirsten Schmalenbach, *Vienna Convention on the Law of Treaties: A Commentary* (Springer 2012), p. 587, para. 59.

48. The requirement of exhaustion of domestic remedies seeks to ensure that, before a claim is brought on the international plane, “the State where the violation occurred should have an opportunity to redress it by its own means, within the framework of its own domestic legal system.”<sup>59</sup> This principle requires that each injured person first seek relief from the legal remedies of judicial or administrative courts or bodies, including administrative remedies.<sup>60</sup>
49. Qatar has recognized that the rule of exhaustion of local remedies applies both under the inter-state procedure of Articles 11-13 and under the individual communication procedure under Article 14 of the Convention.<sup>61</sup> While the present inter-State communication is the first of this kind before the Committee, the Committee’s jurisprudence on exhaustion of local remedies under Article 14 is also relevant for the present purposes given the similarity of the provisions on the obligation to exhaust local remedies of Article 11.3 and 14.7(a) of the CERD. In its jurisprudence relating to individual applications the CERD Committee has confirmed that all available domestic remedies that offer a prospect of success under domestic law must be exhausted before the Committee may consider the merits of situation.<sup>62</sup> As a matter of general international law, the burden is on Qatar to prove that such local remedies were

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<sup>59</sup> *Interhandel* (Switzerland v. United States of America), I.C.J. Reports 1959, p. 6, at p. 27; *see also Ambatielos* (Greece v. United Kingdom), (1956), RIAA, vol. XII, p. 83 at p. 120: “[i]s the whole system of legal protection, as provided by municipal law, which must have been put to the test before a State, as the protector of its nationals, can prosecute the claim on the international plane.”

<sup>60</sup> Article 14(2), Articles on Diplomatic Protection. Articles on Diplomatic Protection, Commentary to draft Article 14, para. 5, *ILC Yearbook 2006*, vol. II(2), p. 45. *See also Ahmadou Sadio Diallo* (Republic of Guinea v. Democratic Republic of the Congo), Preliminary Objections, I.C.J. Reports 2007, p. 582, at p. 601, para. 47 (the remedies which must be exhausted “include all remedies of a legal nature, judicial redress as well as redress before administrative bodies”).

<sup>61</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Qatar v. United Arab Emirates), International Court of Justice, Response on behalf of the State of Qatar to the questions posed by Judge Cançado Trindade on Friday, 29 June 2018, 3 July 2018, para. 8.

<sup>62</sup> *See, e.g.*, CERD, Communication No. 25/2002, *Ahmad Najaati Sadic v. Denmark*, Inadmissibility Decision of 19 March 2003, UN doc. CERD/C/62/D/25/2002, para. 6.4.

exhausted or that the circumstances relieved it of the obligation to exhaust available local remedies.<sup>63</sup>

50. Remedies capable of providing effective relief are indeed available within the UAE to Qatari nationals with respect to each violation of rights alleged by Qatar. It falls to Qatar to show either that these available remedies were in fact exhausted, or either such remedies would not have been effective in the particular circumstances of the case or that their application would be “unduly prolonged.” Qatar has not even argued, let alone established, that Qatari nationals are exempted from exhausting local remedies in the UAE on the grounds that one of the exceptions to this rule applies. Exceptions to the obligation to exhaust local remedies have only been applied in exceptional cases by the Committee.<sup>64</sup> Regarding the exception of undue delay, the Committee found that this exception applied and thus the case was admissible when a court decision had not been rendered after over four and a half years.<sup>65</sup> As evidenced by the documents submitted by the UAE, UAE courts promptly review and decide cases submitted to them, including by Qatari nationals.<sup>66</sup>
51. The evidence to be provided by Qatar must be objective. As the Committee explained when declaring inadmissible an individual communication for lack of exhaustion of local remedies, “doubts about the effectiveness of such proceedings cannot absolve a petitioner from pursuing them.”<sup>67</sup>

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<sup>63</sup> *Ahmadou Sadio Diallo* (Republic of Guinea v. Democratic Republic of the Congo), Preliminary Objections, I.C.J. Reports 2007, p. 582, p. 600, para. 44; *Elettronica Sicula S.p.A. (ELSI)*, (Italy v. United States of America), I.C.J. Reports 1989, p. 15, pp. 43-44, para. 53.

<sup>64</sup> UAE’s Supplemental Response of 29 November 2018, paras. 61, 64 and CERD Committee jurisprudence cited therein.

<sup>65</sup> CERD Committee, Communication No. 29/2003, *Mr. Dragan Durmic v. Serbia and Montenegro*, Decision of 6 March 2006, UN Doc. CERD/C/68/D/29/2003, para. 6.5.

<sup>66</sup> See **Annex 2**, Statement of the cases involving a Qatari citizen and being examined by the UAE courts in the period 6 June 2017 until 25 September 2018, pp. 12-13 (containing a table put together by the Courts Department of Ras Al-Khaimah indicating the date of listing and of ruling by the courts of suits filed by or against Qatari nationals after 5 June 2017). See also, Annex 16 to the UAE’s Response of 7 August 2018.

<sup>67</sup> CERD Committee, Communication No. 19/2000, *Sarwar Seliman Mostafa v. Denmark*, Inadmissibility Decision of 10 August 2001, UN Doc. CERD/C/59/D/19/2000, para. 7.4.

52. The UAE has demonstrated in its previous submissions that there are available and effective remedies that Qatari nationals may resort to in order to complain of any alleged violations of their rights under the CERD.<sup>68</sup> A non-exhaustive exposé over some avenues for redress open to Qatari nationals will nevertheless be provided here.
53. Notably, the fact that UAE courts are authorized to rule on the rights and freedoms of foreigners contained in international conventions to which the UAE is a party such as CERD is confirmed by various provisions of the UAE Constitution.<sup>69</sup>
54. Qatar has put forward no evidence that these constitutionally protected remedies are in fact either unavailable to Qataris or ineffective. To the contrary, court remedies are available and effective and can be pursued without difficulty, either in person or through powers of attorney. Qatar has put forward no evidence of any Qatari national bringing a claim before the UAE courts against the UAE Government in respect of the measures at issue. By contrast, the UAE has offered proof that demonstrates that, since 5 June 2017, Qatari nationals have freely continued to resort to the UAE courts to assert their rights in legal matters, even if not necessarily related to CERD.<sup>70</sup> Further evidence is also herewith submitted to the Committee showing that almost one hundred and fifty powers of attorney have been executed by Qatari nationals since 5 June 2017.<sup>71</sup>
55. In addition, numerous administrative remedies are available to Qataris in the form of complaint procedures specific to various governmental authorities. Such administrative remedies are also effective and Qatar has offered no proof to the contrary. These remedies are easily accessible and complaints are quickly resolved.

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<sup>68</sup> UAE's Response of 7 August 2018, para. 85, UAE's Supplemental Response of 29 November 2018, paras. 61-71.

<sup>69</sup> See UAE Constitution (2011), Articles 40, 41 and 102; UAE's Supplemental Response of 29 November 2018, paras. 65-66.

<sup>70</sup> See Annex 18 to the UAE's Response of 7 August 2018 (containing a summary of the cases involving a Qatari citizen and being examined by federal courts during the period from 1 May 2017 until 20 June 2018); **Annex 2**, Statement of the cases involving a Qatari citizen and being examined by the UAE courts in the period 6 June 2017 until 25 September 2018.

<sup>71</sup> **Annex 2**, Statement of the cases involving a Qatari citizen and being examined by the UAE courts in the period 6 June 2017 until 25 September 2018, p. 2 (containing a table with statistics of the Federal Courts indicating that in the period 6 June 2017 to 25 September 2018 there had been 146 powers of attorney). See also Annex 16 to the UAE's Response of 7 August 2018, p. 2 (containing statistics regarding the powers of attorney concluded in the period from 1/06/2017 to 30/5/2018 with respect to Qatari citizenship in the Emirate of Abu Dhabi).

56. Specifically, Qatar has failed to show any instance of individuals seeking relief from the administrative complaints mechanisms in place by local UAE government. For example, the Government of Dubai Legal Affairs Department is tasked with receiving complaints and claims made against the Government of Dubai.<sup>72</sup> Qataris can file a complaint against a Dubai government entity through the Department's website.<sup>73</sup> If the dispute cannot be amicably settled within two months, the complainant can file claims directly against the government entity before the UAE courts.<sup>74</sup> Qatar has put forward no evidence of recourse to such remedies.
57. Qatar also has not shown any instance of any Qatari national having recourse to local remedies addressing hate speech. UAE Federal Decree Law No. 2 of 2015 prohibits "discrimination of any form" by various means of expression.<sup>75</sup> Hate speech is punishable by monetary fines and even imprisonment. Various means exist for individuals (including Qataris) to bring complaints to the attention of the authorities, including under the mechanisms provided for pursuant to Federal Decree Law No. 2 of 2015 and Law No. 5 of 2012. To facilitate complaints, Dubai police offers an e-service through which an individual can report offenders.<sup>76</sup> Qatar has put forward no evidence of recourse to such remedies.
58. Qatar also has not shown any instance of Qatari nationals making complaints to relevant authorities dealing with alleged blocking of media content in pursuit of their freedom of expression. The blocking of online content may be challenged by individual users

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<sup>72</sup> Law No. (32) of 2008 and Law No. (3) of 1996. *See also* Government of Dubai website "Complaints Against Government Entities," <https://legal.dubai.gov.ae/en/Services/Pages/Services-Desc.aspx?ServiceID=10>.

<sup>73</sup> Government of Dubai website "Complaint filed against a Government Entity," <https://cms.legal.dubai.gov.ae/en/Website/Pages/ComplaintAgainstGovernmentEntity.aspx>.

<sup>74</sup> Government of Dubai website "Complaints Against Government Entities," <https://legal.dubai.gov.ae/en/Services/Pages/Services-Desc.aspx?ServiceID=10>.

<sup>75</sup> Federal Decree Law No. 2 of 2015, Article 6 (15 July 2015), [http://ejustice.gov.ae/downloads/latest\\_laws2015/FDL\\_2\\_2015\\_discrimination\\_hate\\_en.pdf](http://ejustice.gov.ae/downloads/latest_laws2015/FDL_2_2015_discrimination_hate_en.pdf).

<sup>76</sup> "Request to Open a Criminal Case" of the Dubai Police, <https://www.dubaipolice.gov.ae/wps/portal/home/services/individualservices/opencriminalcase?firstView=true>; *see also* "E Crime" of the Dubai Police, <https://www.dubaipolice.gov.ae/wps/portal/home/services/individualservicescontent/cybercrime>.

through submissions via online forms<sup>77</sup> or by the media outlets themselves by petitioning the National Media Council of the UAE.<sup>78</sup> If challenge through this process is unsuccessful, subsequent appeals to the UAE courts to judicially review the decision of the National Media Council are available.<sup>79</sup> Qatar has put forward no evidence of recourse to such remedies.

59. Qatar also has put forward no evidence that any Qatari has made use of the complaint resolution procedures with respect to the alleged violation of their right to health and right to medical treatment. The UAE's Ministry of Health and Prevention ("MOHAP") provides a number of avenues for an individual to file a complaint.<sup>80</sup> Complaints are normally resolved by MOHAP within days. If challenge through this process is unsuccessful, subsequent appeals to the UAE courts to judicially review the decision of MOHAP would be available. Alongside the Federal Government's complaint procedure, for example the Dubai Health Authority has local complaint procedures available for individuals.<sup>81</sup> Qatar has put forward no evidence of recourse to such remedies.

60. Qatar also has not shown any instance of Qatari nationals making complaints with respect to the right of education. For example, the Abu Dhabi Department of Education and Knowledge provides a complaint mechanism for secondary school students whereby an individual can raise a complaint against a UAE school, including for failure to respond to a request for provision of transcripts.<sup>82</sup>

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<sup>77</sup> See "Web Content Block/Unblock Request Form," <https://etisalat.ae/en/generic/contactus-forms/web-block-unblock.jsp>.

<sup>78</sup> The Chairman of the Board's Resolution No. (30) of 2017 on Media Activities Licensing, Articles 67 and 68, <http://nmc.gov.ae/en-us/NMC/Documents/Media%20Activities%20Licensing%20Resolution.pdf>.

<sup>79</sup> The UAE's reliance on the existence of these remedies is without prejudice to its position that broadcasters do not benefit from the protection of the CERD, which only applies to individuals and not corporations.

<sup>80</sup> See Ministry of Health and Prevention website "Customer Complaints," <http://www.mohap.gov.ae/en/Pages/COMPLAINS.aspx>.

<sup>81</sup> DHA website "Medical Complaint," <https://www.dha.gov.ae/en/HealthRegulation/Pages/MedicalComplaintsProcedures.aspx>.

<sup>82</sup> Department of Education and Knowledge website "Raising a complaint against a Private school," <https://www.adek.abudhabi.ae/en/Parents/PrivateSchools/Pages/RCAPS.aspx>.

61. Qatar also has not shown any instance of Qatari nationals making complaints with respect to the right to work, despite the availability of ample remedies. Under UAE law, a complaint system is available through the UAE Ministry of Human Resources and Emiritisation.<sup>83</sup> An individual can file a complaint in person or by using the online service.<sup>84</sup> If a settlement is not reached within two weeks, the complaint is referred to the Labor Court.<sup>85</sup> The ruling of the Labor Court can, subject to certain limitations on small claims, be appealed to the Court of Appeals and further to the Court of Cassation.<sup>86</sup> Qatar has put forward no evidence that any Qatari has availed himself or herself of these complaint resolution procedures.
62. Finally, Qatar also has put forward no evidence that any Qatari has availed himself or herself of the available complaint resolution procedures related to alleged infringement of the right to property or had recourse to the UAE courts. With respect to complaints relating to real property, an individual can file a complaint by various means. For example, disputes between landlords and tenants may be addressed by the Rental Disputes Center of the Government of Dubai, with the option of appeal to the Appellate Division of the Center.<sup>87</sup> Regarding complaints relating to an individual's assets or accounts, the Central Bank of the UAE is equipped to handle these through fax, online or

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<sup>83</sup> As mandated by UAE Labor Law, Federal Decree Law No. 8 of 1980, Article 6. See UAE Ministry of Human Resources and Emiritisation website "Register Labour complaints," <https://www.mohre.gov.ae/en/our-services/%D8%A8%D8%AD%D8%AB-%D8%A7%D9%84%D8%B4%D9%83%D9%88%D9%89-%D8%A7%D9%84%D8%B9%D9%85%D8%A7%D9%84%D9%8A%D8%A9.aspx>. See also Federal Decree Law No. 8 of 1980, Article 6, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/11956/69376/F417089305/ARE11956.pdf>.

<sup>84</sup> See UAE Ministry of Human Resources and Emiritisation website "Complaint Request," <https://eservices.mohre.gov.ae/MOHRE.WebForms/Home/Complaint?lang=en-gb>.

<sup>85</sup> Federal Decree Law No. 8 of 1980, Article 6, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/11956/69376/F417089305/ARE11956.pdf>; UAE Official Government Portal website "The system of courts," <https://www.government.ae/en/about-the-uae/the-uae-government/the-federal-judiciary/the-system-of-courts>.

<sup>86</sup> UAE Official Government Portal website "The system of courts," <https://www.government.ae/en/about-the-uae/the-uae-government/the-federal-judiciary/the-system-of-courts>.

<sup>87</sup> See Government of Dubai Rental Disputes Center website, [http://www.rdc.gov.ae/Services\\_Pages/Services.aspx](http://www.rdc.gov.ae/Services_Pages/Services.aspx). See also Government of Dubai Real Estate Legislation Decree No. (26) of 2013 Concerning the Rent Disputes Settlement Centre in the Emirate of Dubai, Articles 13-14, <http://www.dubailand.gov.ae/Style%20Library/download/EN-Legislation.pdf>.

in person through various Central Bank locations.<sup>88</sup> The UAE judiciary is also naturally available to all Qataris with grievances related to property matters. Both the complaint procedures and the UAE courts are able to provide redress to individuals who successfully prove that their right to property has been unlawfully infringed. However, again, Qatar has provided no evidence that such remedies have been exhausted.

63. To sum up, Qatar’s position on the issue of the exhaustion of domestic remedies has been consistent. It is, in a word, denial. Thus, while Qatar has failed to provide any evidence that the Qatari nationals in question have attempted to invoke or exhaust domestic remedies in the UAE to vindicate their grievances, Qatar tries to explain this away by simply denying, without more, that any remedies are available or are effective given “the inability to appear in person because of expulsion from and the ban on entry to the UAE, serious difficulties finding local lawyers to provide legal representation because of the general atmosphere of hostility towards Qatar and Qataris”.<sup>89</sup>
64. Yet, such a statement is pure fiction when measured against the facts. Evidence has previously been provided to the Committee, and is supplemented by additional evidence submitted herewith, that demonstrates that, far from a “ban on entry”, Qatari nationals have entered the UAE in their thousands since 5 June 2017.<sup>90</sup>
65. As the complainant in this proceeding, Qatar bears the burden of proof to establish that domestic remedies have been invoked and exhausted or to establish that exceptional circumstances relieve it of that obligation.<sup>91</sup> Faced with the evidence demonstrating the accessibility to Qatari nationals of the UAE legal system, Qatar’s burden of proof to

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<sup>88</sup> Central Bank of the UAE website “Complaints and Enquiries,” <https://centralbank.ae/en/form/complaints>.

<sup>89</sup> See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Qatar v. United Arab Emirates), Request for the Indication of Provisional Measures: Verbatim Record of Public Sitting of 29 June 2018, at 10:00 a.m. (CR 2018/14), p. 12, para. 5 (Klein). See also *Note Verbale* of Qatar to the CERD Committee, dated 29 October 2018, requesting the Committee to re-initiate Qatar’s complaint against the UAE (“Any nominal remedies are either unavailable or ineffective in light of the expulsion of Qataris from the United Arab Emirates and ensuing travel restrictions, as well as the ongoing campaign of hatred against Qatar and Qataris in the territory or the United Arab Emirates.”).

<sup>90</sup> See paras. 8-10, *supra*.

<sup>91</sup> See e.g., *Ahmadou Sadio Diallo* (Republic of Guinea v. Democratic Republic of the Congo), Preliminary Objections, I.C.J. Reports 2007, p. 582, paras. 42-44.

establish that the Qatari nationals who it alleges have been aggrieved by the UAE's conduct in violation of CERD have in fact sought to invoke and have thereafter exhausted domestic remedies to seek redress for their grievances is substantially heightened. Hiding behind blanket denials unsupported by evidence will not suffice and, with respect, should not be accepted by the Committee.

66. There can be no doubt that Qatar has failed to overcome the admissibility hurdle in Article 11.3 of CERD. Because available domestic remedies have neither been invoked nor exhausted, Qatar has failed to meet the requirements of that provision.
67. For that reason alone the Committee must dismiss Qatar's Article 11 Communication and discontinue any further procedure addressing that communication.

## **V. Conclusion**

68. For the reasons set out herein and in the UAE's 7 August Response and the 29 November 2018 Submission, the UAE respectfully urges the Committee to dismiss Qatar's Article 11 Communication for lack for jurisdiction and/or lack of admissibility.
69. With respect, in light of the manifest lack of jurisdiction and admissibility of Qatar's Article 11 Communication, any action taken by the Committee to further Qatar's complaint would be *ultra vires*.
70. The UAE once again takes this opportunity to reaffirm its unwavering commitment to eliminating racial discrimination in all of its forms and to combating hate speech.

