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International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2018

Public sitting

held on Friday 29 June 2018, at 4.30 p.m., at the Peace Palace,

President Yusuf presiding,

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

VERBATIM RECORD

ANNÉE 2018

Audience publique

tenue le vendredi 29 juin 2018, à 16 h 30, au Palais de la Paix,

sous la présidence de M. Yusuf, président,

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

COMPTE RENDU

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

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

M. Couvreur, greffier

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Mr. Jassim Al-Kuwari, Ministry of Foreign Affairs,

Mr. Nasser Al-Hamad, Ministry of Foreign Affairs,

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Mr. Ahmad Al Basti, Ministry of Foreign Affairs,

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M. Hamad Al-Khulaifi, ministère des affaires étrangères,

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M. Talal Abdulaziz Al-Naama, ministère des affaires étrangères,

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The PRESIDENT: Please be seated. The sitting is now open. The Court meets this afternoon to hear the second round of oral observations of the United Arab Emirates on the Request for the indication of provisional measures filed by the State of Qatar.

Je vois que le professeur Pellet est déjà prêt, alors je lui donne la parole. Vous avez la parole.

M. PELLET : Merci, Monsieur le président. Nous n'avons pas tellement de temps ; je préfère devancer l'appel.

REMARQUES GÉNÉRALES — INCOMPÉTENCE SUR LE FONDEMENT DE L'ARTICLE 22 DE LA CIEDR

1. Monsieur le président, Mesdames et Messieurs les juges, permettez-moi d'abord de souligner la position inconfortable dans laquelle nous nous trouvons : le Qatar a disposé de 21 heures pour préparer sa réponse à nos plaidoiries d'hier, vous nous en avez octroyé cinq. Certes ceci n'est pas sans précédent mais c'est une maigre consolation et cela n'empêche pas que l'égalité entre les Parties n'est pas garantie par un tel arrangement. J'indique tout de même en passant qu'il serait par contre sans précédent que vous vous reportiez au texte écrit que Lord Goldsmith n'a pas pu lire ce matin ! De même, nous nous élevons contre l'inclusion dans les comptes rendus de l'audience de ce matin de notes de bas de page qui ne se limitent pas à donner des références mais contiennent non seulement de longues citations mais aussi des remarques de fond complémentaires ; nous prions le Greffe de bien vouloir les supprimer de toute version qui pourrait être mise en ligne et nous vous demandons, Mesdames et Messieurs de la Cour, de n'en tenir aucun compte. On ne plaide pas devant vous par notes de bas de page interposées ! Ceci constitue en outre une manière inacceptable de dépasser le temps que vous avez alloué aux Parties.

2. Au bénéfice de ces remarques, la délégation des Emirats fera de son mieux pour répondre aux plaidoiries qataries de ce matin. Nous le ferons en suivant l'ordre dans lequel les présentations du Qatar ont été faites.

3. Avant de répondre à la plaidoirie de mon excellent ami Larry Martin sur les conditions ***~~dans lesquelles~~ auxquelles*** l'article 22 de la convention CERD subordonne la compétence de la Cour, je voudrais, avec votre permission, Monsieur le président, résumer la manière dont les problèmes se posent selon nous.

4. Je le ferai en cinq propositions que nous développerons durant l'heure et demie qui vient :

[Projection n° 1 : Statement of Support for Blockade and Cessation of Ties by the UAE Ministry of Foreign Affairs, dated 5 June 2017 (Annex 2 to Qatar's Application ; Tab 1 of Qatar's Judges Folders of 29 June 2018) – concluding paragraph]

1) Cette affaire n'a rien à voir avec de la discrimination raciale, fût-elle fondée sur «l'origine nationale» : les Emirats arabes unis, avec plusieurs autres Etats, ont pris des mesures *contre l'Etat du Qatar* qu'ils accusent, preuves à l'appui, de soutenir le terrorisme et de s'ingérer indûment dans leurs affaires intérieures ; la convention CERD n'interdit nullement l'adoption de mesures différenciées en fonction de la nationalité des personnes concernées ; le Qatar fonde l'essentiel de son argumentation sur le communiqué du ministère des affaires étrangères des Emirats du 5 juin 2017, qui figure dans le dossier qu'il vous a fourni ce matin et qui se termine ainsi :

> «While regretting the policies taken by the State of Qatar that sow seeds of sedition and discord among the region's countries, the 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.»[1]

[Fin de la projection n° 1]

2) Certes, ces mesures ont touché des ressortissants du Qatar mais les Emirats se sont efforcés de limiter, autant que faire se pouvait, les inconvénients en résultant à cet égard : dès le 11 juin 2017 une *hotline* a été créée en vue d'assister les familles affectées[2] ; y compris la possibilité de demander des dérogations liées aux mesures d'immigration.

3) S'il est vrai que dans les premiers jours de mise en œuvre des mesures contestées quelques problèmes ont pu se poser, ils sont aujourd'hui résolus comme en témoigne la quasi-absence de plaintes récemment reçues par les instances concernées du Qatar ou la retenue beaucoup plus grande des ONG dans leurs rapports récents (je pense notamment à celui d'Amnesty International du 5 juin, qui n'évoque en aucune manière le sort des Qataris aux Emirats).

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[1] Requête introductive d'instance déposée par l'Etat du Qatar, annexe 2 et onglet n° 1 du dossier des juges, déposé par le Qatar le 29 juin 2018 : «Statement of Support for Blockade and Cessation of Ties by the UAE Ministry of Foreign Affairs», 5 juin 2017, dernier paragraphe.

[2] Onglet n° 3 du dossier des juges, déposé par le Qatar le 29 juin 2018 : «UAE MoFA Announcement re Directive for Hotline Addressing Mixed Families», 11 juin 2017.

4) Si, par impossible, vous décidiez d'indiquer des mesures conservatoires, vous ne pourriez le faire évidemment qu'en fonction de la situation actuelle qui n'a aucun rapport avec celle, dramatique, que le Qatar a essayé de dépeindre et en tenant pleinement compte des circonstances qui ont conduit les Emirats et trois autres Etats de la région à les prendre.
5) Et enfin, nous persistons à penser que vous n'avez pas compétence pour cela, à la fois parce que la convention CERD sur laquelle le Qatar entend fonder la compétence de la Cour n'est pas pertinente et parce que, le serait-elle, les conditions préalables à votre saisine ne sont pas remplies.

5. C'est sur ce dernier point que je vais revenir brièvement maintenant.

6. Monsieur le président, dans son intervention de ce matin, M[e] Martin s'est employé d'une part, à montrer que le Qatar a déployé de grands efforts pour résoudre par la négociation le différend l'opposant aux Emirats arabes unis et, d'autre part, à vous convaincre de ne pas décider si les conditions préalables (il ne le conteste pas) mises par l'article 22 à votre saisine sont cumulatives et successives ou alternatives et simultanées.

7. Je commencerai par ce second point. Mon contradicteur vous invite à la prudence à cet égard. Vous en avez fait preuve l'an dernier et, je le dis avec mon habituelle franchise, nous croyons que cette prudence n'est pas de mise lorsqu'il s'agit de déterminer exclusivement un point de droit. Bien sûr que la Cour ne doit pas se précipiter pour indiquer des mesures conservatoires (bien sûr ~~***même***~~ qu'elle doit même faire preuve d'une prudence toute particulière dès lors qu'elle a admis que les mesures qu'elle indique ont un caractère obligatoire pour les Parties) ; c'est pour cela, pour bénéficier, comme l'a suggéré le regretté président Jiménez de Aréchaga, de toute l'argumentation et des preuves apportées par les Parties que vous ne vous prononcez que *prima facie*. Mais autant cela fait sens lorsque les faits sont discutables et discutés entre les Parties, autant on n'en voit pas la justification lorsque le problème à résoudre est exclusivement juridique. Je ne puis que le répéter, Monsieur le président, *jura novit curia* — la Cour connaît le droit. On nous a assez dit et redit — à juste titre — qu'il ne fallait pas infliger de conférences sur le droit applicable à la Cour pour que nous puissions, en confiance, nous en remettre à vous pour l'appliquer lorsque le problème en cause se pose exclusivement au plan juridique, sans que vous ayez de raison d'en remettre l'examen à plus tard. Que cela puisse avoir une incidence sur d'autres

affaires en cours n'a strictement aucune pertinence — je dirais même au contraire : autant que cette question récurrente soit enfin tranchée.

8. M^e^ Martin a également cité l'opinion dissidente commune de certains juges sous l'arrêt de 2011 dans *Géorgie c. Russie*[3]. Je préfère les positions majoritaires — et puis, peut-être qu'au vu de nouvelles plaidoiries et de délibérations nouvelles, les auteurs de celle-ci qui siègent aujourd'hui parmi vous auront changé d'avis ! Les travaux préparatoires, sur lesquels mon contradicteur s'est montré fort discret[4], sont, décidément, parlants à cet égard ; puisqu'il les a laissés de côté, je me permets, Mesdames et Messieurs de la Cour, de vous y renvoyer (vous trouverez les extraits pertinents à l'onglet n^o^ 2.1 de vos dossiers d'hier et un schéma très parlant sur l'historique de la négociation de la clause compromissoire à l'onglet n^o^ 2.2).

9. Toujours à ce sujet, M^e^ Martin a déclaré que «[i]n the event negotiations fail, it would be absurd to ask an aggrieved State to pursue a different way of doing exactly the same thing before asking the Court to vindicate its rights, all the more since the committee procedure does not entail a binding decision»[5]. Voilà, Monsieur le président, une conception très curieuse de la conciliation — dont pourtant des exemples récents ont montré combien elle pouvait être fructueuse et ne saurait être assimilée purement et simplement à des négociations directes ; je pense en particulier à celle entre la République démocratique du Timor-Leste et le Commonwealth d'Australie. En outre, l'interprétation de M^e^ Martin revient, à nouveau, à priver la seconde condition de l'article 22 de tout effet utile.

10. D'ailleurs, si saisir le Comité était à ce point inutile, on se demande pourquoi le Qatar l'a fait, le 8 mars dernier, pour ensuite s'en détourner en vous saisissant le 11 juin, après avoir fait en toute précipitation un semblant de tentative pour négocier. Car, Monsieur le président, s'il est exact qu'il résulte de la jurisprudence de la Cour que les Etats peuvent poursuivre simultanément plusieurs modes de règlement des différends qui les opposent, ici ces deux modes de règlement sont l'un et l'autre prévus — à titre cumulatif, nous le croyons, à titre alternatif, Qatar le prétend — mais, en tout état de cause certainement pas simultanément, sauf, encore une fois à vider

[3] CR 2018/14, p. 14, par. 19 (Martin).

[4] *Ibid.*

[5] CR 2018/14, p. 15, par. 21 (Martin).

l'obligation de recourir aux procédures prévues par la convention de tout effet utile. Le contraste avec l'article 16, que M[e] Martin a invoqué ce matin à l'appui de sa thèse est éclairant à cet égard[6] : les Etats parties ne sont pas empêchés de recourir à des procédures pour le règlement d'un différend les opposant *«autres que ceux prévus dans la convention»* ; mais ces *autres* procédures ont un statut différent — prévu dans l'article 16 — et, *a contrario*, l'argument de mon contradicteur se retourne, je crois, complètement contre lui.

[Projection n[o] 2 : «Chronology»]

11. J'en viens à l'autre argument qu'il a invoqué : le Qatar aurait déployé de vains efforts pour convaincre les Emirats de négocier sur «le différend», efforts qui auraient commencé bien avant le 25 avril. Le tableau projeté en ce moment est censé le démontrer : ceci résulterait des indications portées sur la partie gauche, celle qui est en blanc. Je n'ai guère le temps de commenter ceci en grands détails, mais je souhaite, Mesdames et Messieurs les juges, attirer votre attention sur un point — le seul qui importe à vrai dire : toutes ces prétendues offres de négociations portent sur «la crise», «the crisis» en général ; sur le différend concernant les allégations qataries de discrimination raciale, tout simplement *RIEN* — «nothing» — dans la partie blanche.

12. Elles apparaissent seulement le 8 mars avec la communication du Qatar au Comité CERD — sans que le Qatar ait jugé bon d'en adresser copie aux Emirats, qui n'en ont pris connaissance que le 7 — ou, plus probablement, le 8 ou le 9 mai — lorsqu'ils ont reçu la lettre du Secrétaire général des Nations Unies leur adressant copie de la communication en question. Le 1[er] mai, les autorités émiraties avaient reçu la lettre-ultimatum du 25 avril, les pressant de négocier — cette fois, en effet — sur des griefs basés sur la convention CERD. L'annonce, une semaine plus tard, de l'existence de la saisine du Comité dont ils n'avaient pas été avertis, n'était pas de nature à convaincre les Emirats de prendre très au sérieux cette proposition tardive de négociations directes. La saisine de la Cour, sans que cette procédure ait été épuisée non plus. Tout ceci a été fait de bonne foi ? Non, Monsieur le président, vraiment pas ! Et j'ajoute que si l'urgence était telle, si la situation avait été aussi dramatique que le Qatar le décrit, on se demande bien pourquoi il a attendu plus d'un an pour vous saisir en catastrophe, près d'un an pour saisir le Comité CERD et pourquoi

[6] CR 2018/14, p. 16, par. 25 (Martin).

il s'est gardé de demander que celui-ci déclenche la procédure d'urgence prévue par ses décisions de 1993 et 2007.

13. On dit parfois, Monsieur le président, que les Etats, en tous cas certains d'entre eux, vous instrumentalisent. Voici un cas d'école !

14. Mesdames et Messieurs de la Cour, merci pour votre attention. Monsieur le président, pourriez-vous donner la parole à mon très estimé collègue Tullio Treves ?

Le PRESIDENT : Monsieur le professeur Pellet. Je donne à présent la parole à M. le professeur Treves. Vous avez la parole.

Mr. TREVES:

1. Mr. President, Members of the Court, I come back to the argument I developed before you yesterday morning in light of the objections elegantly presented earlier on today by Professor Klein. He made in essence three points:

(1) That the Court is not called upon to make a determination on admissibility in proceedings concerning provisional measures;

(2) That in a case in which a State vindicates its own rights and those of its citizens the previous exhaustion of domestic remedies rules does not apply;

(3) That prima facie there remain doubts as to the existence of remedies in the UAE[7].

2. In the short time at my disposal I will respond to these objections.

3. As regards the first objection, Professor Klein concedes that the Court, as I mentioned yesterday morning referring to the 1996 Order in *Cameroon* v. *Nigeria,* acknowledges the possibility of assessing prima facie questions of admissibility in proceedings concerning provisional measures[8]. He states, however: (1) that the Court declined to rule on the question whether a determination on the subject must be made in such proceedings and (2) that the Court has never made such a determination[9].

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[7] CR 2018/14, pp. 17-20 (Klein).

[8] CR 2018/13, p. 31, para. 11 (Treves), referring to *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Provisional Measures, Order of 15 March 1996, I.C.J. Reports 1996 (I),* p. 21, para. 33.

[9] CR 2018/14, p. 17, para. 2 (Klein).

4. On the first point there is no query — as the Court explicitly said so. On the second, Professor Klein relies on seven other cases in which the Court could, but did not, make such a determination[10]. He does not mention however, that in the very Order of 1996 in the *Cameroon* v. *Nigeria* case, the Court in fact envisaged the question of whether the Application of Cameroon was prima facie inadmissible, and ruled on it[11]. So there is at least one decision on prima facie admissibility in a provisional measures proceedings.

5. The main point in Professor Klein's argument seems to be that the Court, although it had a number of occasions to deal with the question after *Cameroon* v. *Nigeria*, declined to do so[12]. In response, it may be observed that in all provisional measures proceedings before 2009 (or 2006, if we take into account discussions that presumably led to Judge Abraham's separate opinion in *Pulp Mills*[13]) the Court has had the "occasion" of taking a stand on whether plausibility of rights was a requirement — but it did not do so. Such taking of stand was effected only when the Court considered that it could take this step by including in its jurisprudence a new judge-made requirement of plausibility after that of prima facie jurisdiction.

6. In the argument submitted to the Court yesterday, and that we maintain today, it is humbly suggested that this is the time for the Court to make this further step, the reason being that to assess prima facie admissibility becomes a logical necessity since the Court has adopted plausibility of rights as a requirement. There would be a wide gap between the determination of prima facie jurisdiction and the determination of prima facie plausibility unless prima facie admissibility were to be considered a requirement. Not considering this aspect might lead the Court to examine the plausibility of rights that are the object of a prima facie inadmissible claim.

7. The close connection between exhaustion of local remedies and the merits that, according to Professor Klein, existed in the cases he referred to[14], does not exclude that prima facie admissibility be considered as a requisite for the granting of provisional measures. In the present

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[10] CR 2018/14, p. 17, ***para. 2 and*** footnote 30 (Klein).

[11] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Provisional Measures, Order of 15 March 1996, I.C.J. Reports 1996 (I)*, p. 21, para. 33.

[12] CR 2018/14, p. 17, para. 2 (Klein).

[13] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Provisional Measures, Order of 13 July 2006, I.C.J. Reports 2006*; separate opinion of Judge Abraham, pp. 139-140, para. 8.

[14] CR 2018/14, pp. 17-18, para. 2 and footnote 30 (Klein).

case**,** the fact that Qatari citizens have not exhausted local remedies emerges so obviously from the file that there is no need to wait for determinations on the merits.

8. Coming now to Professor Klein's second objection, his point is that in cases in which a State is acting at the same time "in its own name and in the name of its citizens" the exhaustion of the local remedies rule does not apply[15]. According to Professor Klein, the judgment of the Court in *Avena* supports the view that, in the present case, the domestic remedies rule does not apply.

9. With all due respect, however, what the Court said in *Avena* is of no assistance to Qatar in this case. The Court in *Avena* was dealing with Article 36 of the Vienna Convention on Consular Relations. What the Court said in *Avena* in this regard is as follows — as quoted also by Professor Klein this morning:

> "violations of the rights of the individual under Article 36 may entail a violation of the rights of the sending State, and that violations of the rights of the latter may entail a violation of the rights of the individual. In these special circumstances of interdependence of the rights of the State and of individual rights, Mexico may, in submitting a claim in its own name, request the Court to rule on the violation of rights which it claims to have suffered both directly and through the violation of individual rights conferred on Mexican nationals under Article 36, paragraph 1 *(b)*. The duty to exhaust local remedies does not apply to such a request."[16]

This is the quotation from the *Avena* case.

10. As this passage makes clear, the reason why the Court concluded for the inapplicability of the domestic remedies rule in *Avena* is that there are "special circumstances of interdependence of the rights of the State and of individual rights"[17] in the specific context of Article 36 of the Vienna Convention on Consular Relations. Professor Klein concluded that similar interdependence between the rights of the State and individual rights exists in this case as well, but he made no attempt to show such similarity[18].

11. I respectfully submit that no such similarity can be shown because Article 36 of the Vienna Convention on Consular Relations sets forth a *sui generis* régime that was described by your Court in the *LaGrand* case as "an interrelated régime designed to facilitate the implementation

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[15] CR 2018/14, pp. 18-19, paras. 3-4 (Klein).

[16] *Avena and Other Mexican Nationals (Mexico* v. *United States of America), Judgment, I.C.J. Reports 2001*, p. 36, para. 40.

[17] *Ibid.*

[18] CR 2018/14, p. 19, para. 4 (Klein).

of the system of consular protection"[19]. Article 36, paragraph 1, of the Vienna Convention on Consular Relations is specifically designed to facilitate the exercise of consular functions relating to nationals of the sending State. It provides for instance for the freedom of consular officers "to communicate with nationals of the sending State and to have access to them" as well as for the right of consular officers "to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation". No such direct rights of the State are at issue in these proceedings. Therefore, the special circumstances to which the Court referred in *Avena* are simply not present in this case.

12. The third objection, that Professor Klein presents as "subsidiary", is that, as there remain considerable doubts about the existence in the UAE of efficient domestic remedies accessible to Qatari citizens, it cannot be concluded that Qatar's submission is prima facie inadmissible[20]. I will not go into detail on this argument. May I only underscore that the mechanism of the hotline is more appropriate and expeditious than more traditional mechanisms, in situations that, as the one under consideration in the present case**,** involve~~s~~ a high number of persons[21]. And may I refer to the pleadings of the colleagues who will take the floor after me. They will expose the unreliability of the elements of evidence on which Qatar relies.

13. Mr. President, Members of the Court, this concludes my brief statement. I would be grateful if you could kindly give the floor to my colleague Mr. ***Simon Olleson*** who will deal with the evidence submitted by Qatar.

The PRESIDENT: I thank Professor Treves and I will now give the floor to Mr. Olleson.

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[19] *LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001*, p. 492, para. 74.

[20] CR 2018/14, pp. 19-20, para. 5 (Klein).

~~[21] CR 2018/13, p. 34, para. 23 (Treves).~~

Mr. OLLESON:

EXISTENCE OF A DISPUTE, PLAUSIBILITY OF RIGHTS AND CONNECTION WITH THE MEASURES REQUESTED

1. Mr. President, Members of the Court.

My short intervention this afternoon will deal with the three topics of prima facie jurisdiction and the existence of a dispute, plausibility of rights and the link between the rights and measures requested.

Prima facie jurisdiction and the existence of a dispute

My first topic relates to the issue of prima facie jurisdiction and the existence of a dispute in the present case.

2. Yesterday, I addressed you in relation to the point that the Court does not have jurisdiction prima facie. In that context, in dealing with the submissions of Mr. Donovan on jurisdiction *ratione materiae*, I made reference to your recent jurisprudence, in particular, paragraph 47 of the decision in *Immunities and Criminal Proceedings*, as repeated in paragraph 23 of your decision in *Ukraine* v. *Russia*[22].

3. Mr. Martin did not seek to respond directly at all in this regard, but simply asserted that Qatar had met its burden in establishing the existence of a dispute, on the basis that the very fact that an issue was raised as to whether the Convention is applicable to the dispute "only confirms the existence of a dispute"[23]. He passed responsibility for responding to the substance of the argument to Ms Amirfar as a question of plausibility of the rights in question[24].

4. Now, in your judgment in *Ukraine* v. *Russia*, however, you stated clearly that, in order to determine, even prima facie, whether a dispute within the meaning of the relevant jurisdictional provision exists, the Court "must — *must* — ascertain whether the acts complained of by [the Applicant] . . .

[22] CR 2018/13, p. 36, para. 5 (Olleson).

[23] CR 2018/14, p. 10, para. 3 (Martin).

[24] CR 2018/14, p. 10, para. 3 (Martin).

The PRESIDENT: Mr Olleson, could I ask you again please to slow down for the interpreters. Thank you.

Mr. OLLESON: I do apologize, Mr. President.

The quote from *Ukraine* v. *Russia* was that the Court "must"**,** and I emphasize *must***,** **"**ascertain whether the acts complained of by the Applicant are prima facie capable of falling within the provisions of that instrument"[25].

5. As with the question of whether the conditions to seisin are alternative or cumulative, as addressed by Professor Pellet[26], the issue raised is the question of applicability of the Convention is a pure question of law, of interpretation of the Convention. The Court is competent to form a view in this regard at this stage of the proceedings, and indeed must do so in order to ascertain whether the acts complained of are prima facie capable of falling within the Convention. That is so, even if that view will necessarily be only of a provisional nature.

6. Mr. Martin also raised the rather strange criticism that I had not sought to deny the factual allegations[27]. I of course did deny the truth of the factual allegations as to the alleged collective expulsions, and supposed travel ban, as well as regards other matters. Further, the lack of any sufficient evidential basis supporting Qatar's factual allegations was also dealt with by both the Agent, and, at length and in detail, by Professor Shaw.

7. In any event, any such criticism is misplaced. In the context of the assessment of the existence of a dispute, the question clearly is not dependent on whether or not the facts are established. Rather, the assessment is one of whether the alleged acts complained of, as pleaded, are "prima facie capable of falling within the provisions" of the relevant instrument. In the context of an issue going to jurisdiction *ratione materiae*, that assessment is necessarily made in the abstract, on the basis of the pleadings, in particular the factual allegations made by the Applicant.

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[25] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016*, p. 1148, para. 47; 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.115, para. 22.

[26] CR 2018/13 (Pellet).

[27] CR 2018/14, p. 10, para. 2 (Martin).

8. Now, as to the substance of the argument as to non-applicability of the Convention, I will not attempt to restate our position, but merely respond to the various points made by Ms Amirfar. None of these undermine our position that the Convention does not apply to differences of treatment based on present nationality.

9. First, Ms Amirfar suggested that the UAE's central argument is that "national origin" and "ethnic origin" are one and the same[28]. That, however, is a misrepresentation of our position. Her assertion that we seek "drastically to limit the ambit of the Convention to matters of ethnic cleansing, etc."[29] is simply false; I suggested nothing of the sort. The only point we rely upon is that, that term does not, on its ordinary meaning, and was not intended to, as the *travaux* show, apply to differences of treatment on the basis of present nationality.

10. In this regard, Ms Amirfar's argument based on the object and purpose of the Convention is necessarily circular; by arguing that the object and purpose of the Convention is one of the elimination of "racial discrimination in all its forms", as defined in Article 1 (1), Ms Amirfar necessarily begs the question of whether discrimination on the basis of present nationality is covered. The reference back to the Charter and the Universal Declaration takes one no further in so far as they likewise refer to "national origin"[30].

11. Similarly, Ms Amirfar's argument that the "umbrella concept" of the Convention is "not 'race' but 'racial discrimination'" and that that concept was intended "to apply to *racial* discrimination in all its forms and manifestations"[31] also suffers from evident circularity, and this is a point I expressly cautioned against yesterday; in so far as she relies on the definition of "racial discrimination" framed in terms of "national origin" as incorporating nationality, this again simply begs the question.

12. In this context, it bears repetition that the Convention is not a convention to outlaw *all forms of discrimination* — it is a Convention for the Elimination of All Forms of *Racial* Discrimination; the notion of "national and ethnic origin" must be read in that context, and in light

[28] CR 2018/14, p. 22, para. 4 (Amirfar).

[29] CR 2018/14, p. 22, para. 4 (Amirfar).

[30] CR 2018/14, pp. 22-23, para. 6 (Amirfar).

[31] CR 2018/14, p. 22, para. 5 (Amirfar).

of the orientation of the Convention as a whole as it results from its Preamble and substantive provisions.

13. Ms Amirfar sought to pray in aid Article 1 (3) of the Convention and the specific, limited prohibition therein of discrimination on the basis of nationality. She asserted that the express reference to nationality in Article 1 (3) "wholly defeats the argument that 'national origin' carries a 'narrower' meaning than 'nationality'"[32]. She made no attempt however to explain why that might be the case.

14. To the contrary in fact, Article 1, paragraph 3, merely serves to underline that the definition of racial discrimination in Article 1, paragraph 1, of the Convention refers not to "nationality", but only to "national . . . origin". The terms are clearly different.

15. In contrast to Article 1, paragraph 2, of the Convention, Article 1, ***paragraph 3*** is not of general application; its scope is limited to "the legal provisions of States Parties concerning nationality, citizenship or naturalization". As a consequence, the express prohibition of discrimination on the basis of nationality contained in that provision is limited within that context, and does not form part of the general prohibition of racial discrimination. Further, the inclusion of Article 1, paragraph 3, cannot be regarded as having fully dealt with the concerns expressed in the Third Committee, including by the French and United States delegations[33].

16. On that point, Ms Amirfar's assertion that the *travaux* show that the concern was "to ensure that the denial of certain political rights or other benefits of citizenship to non-citizens would not constitute a violation of the Convention"[34] is notably unreferenced.

17. Further, Ms Amirfar had no response as to the specific passages from the *travaux* I took you to yesterday, in particular that of the US representative. Her reference to the continuation of the statement of the US delegate that the purpose of the US-French amendment was "to allow certain accepted distinctions between citizens and non-citizens"[35] is of course, entirely consistent with both

[32] CR 2018/14, p. 22, para. 5 (Amirfar).

[33] CR 2018/14, p. 24, para. 9 (Amirfar).

[34] CR 2018/14, p. 24, para. 8 (Amirfar).

[35] CR 2018/14, p. 24, para. 8 (Amirfar).

the terms of the amendment proposed by the US and French delegations, and the earlier passage from the statement of the US representative to which I referred you yesterday[36].

18. Notably, Ms Amirfar did not come back on the substance of what I said yesterday as to paragraph 4 of General Recommendation No. XXX. Her more general reliance on General Recommendation No. XXX again suffers from the fundamental problem that it presupposes that the definition of racial discrimination in Article 1, paragraph 1, and therefore in the Convention, extends to differences of treatment based on nationality.

19. The views of the CERD Committee may of course be of some interest to the Court; however, the question of interpretation of the Convention is, in the final analysis, one for the Court alone.

Plausibility

20. I turn to the question of plausibility. As an initial point, as I said yesterday the issue of plausibility of rights is one which can relate to both the legal existence of the right in question, and whether there exists a sufficient factual underpinning for the claim of violation of the right (i.e. whether the claim is plausible).

21. Mr. Martin made no response in this regard, nor did Ms Amirfar touch upon it in her presentation.

22. So in the present case, the question of plausibility arises in these two aspects. First, the plausibility of the rights relied upon, and second, in light of the extreme thinness of the evidence put forward by Qatar in support of its allegations, the plausibility of its claims.

23. I will deal with issues relating to the legal plausibility of the rights relied upon, whilst Mr. Buderi will deal with the plausibility of Qatar's claims as a matter of fact and of the evidence.

24. As to the alleged infringement of the right to expression, Ms Amirfar also dealt with this issue as one of plausibility, although it was, of course, raised by us as one of the existence of a dispute. As I explained yesterday, the obligation in Article 5 is one to outlaw discrimination in respect of freedom of expression. The measures complained of, however, do not affect freedom of expression in a discriminatory fashion. Ms Amirfar suggested that the measures were within the

[36] CR 2018/13***, p. 47, para. 56*** (Olleson).

scope of the Convention on the basis that they "target and stigmatize" Qataris[37]; however, there is self-evidently no basis for that allegation.

25. As to the right to family life, Ms Amirfar in substance rested Qatar's case on the existence of the right under customary international law, and "other human rights instruments", including, implicitly, the Convention on the Rights of the Child.

26. Even if it were to be accepted that the right to family life formed a part of customary international law, however, as I emphasized yesterday, Qatar's claim requires it to treat the right as encompassing an obligation to allow foreign nationals to enter.

27. As for the Convention on the Rights of the Child, as an initial point, the obligations thereunder can self-evidently be applicable only in respect of families with children and which have been separated. Further, a careful distinction has to be drawn as to whether the rights in question under the Convention are those only of children, or also of their parents.

28. Now, quite apart from this, there is no plausible basis on which to suggest that the Convention on the Rights of the Child can properly be understood as giving rise to a right of any child to enter a particular State, still less of their parents to do so.

29. In this regard, Article 9, paragraph (1) imposes an obligation to "ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child".

30. However, Article 10 (1) provides that in accordance with Article 9 (1), "applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner".

31. The obligation in this regard is clearly a limited one. It is not an obligation to admit a child or his or her parents in all ~~***the***~~ circumstances for the purposes of family reunification. At most, it is an obligation to give due consideration to such an application in a humane and timely manner.

32. As to the rights to public health and medical care, education and training, work, and property, no response was offered to the points I made yesterday that the obligation under Article 5

[37] CR 2018/14, p. 28, para. 17 (Amirfar).

in respect of each of those rights is one not to discriminate on prohibited grounds. As regards my point that none of those rights confers a right to enter, we note the acceptance by Qatar that the UAE has a right to regulate its borders[38].

33. Qatar's case in this regard was apparently reduced to relying on the assertion that the 5 June 2017 press release as such resulted in the collective expulsion of Qatari nationals, and therefore infringed the relevant rights. In so far as the allegation of collective expulsion, or individual expulsions, is entirely unsubstantiated on the facts, this argument takes Qatar no further. Further, to the extent that Qatari nationals are outside the UAE, there can be no dispute (and indeed Qatar has accepted) that it is its sovereign right to regulate their entry.

34. As a consequence, the existence of the rights relied upon, we submit, is not plausible.

Link between the rights relied upon and measures sought

35. Finally, on the link between the rights relied upon and the measures sought, Ms Amirfar was almost as brief as Professor Klein , and likewise did little more than simply assert the existence of the requisite link between the rights relied upon and the measures sought[39]. She did not directly respond to a number of the points I made yesterday, to which I simply refer the Court.

36. Ms Amirfar did, however, expressly accept that Qatar does not seek to require the UAE to permit entry of *all* Qatari nationals[40]; that concession puts an end, or should put an end, to the first general measure sought in paragraph 19 *(a)* (i) of the Request, which, as I said yesterday, is exceptionally broad and does not have the requisite link to the rights relied upon by Qatar.

37. Mr. President, that concludes my brief intervention. I would be grateful if you would now call on Mr. Buderi.

The PRESIDENT: I thank you and I now give the floor to Mr. Buderi.

[38] CR 2018/14, p. 29, para. 19 (Amirfar).

[39] CR 2018/12, p. 30, para. 20 (Amirfar).

[40] CR 2018/12, p. 29, para. 20 (Amirfar).

Mr. BUDERI: Mr. President, Members of the Court, it is an honour to plead before you and to do so on behalf of the United Arab Emirates.

THE EVIDENCE RELIED UPON BY QATAR TO REQUEST PROVISIONAL MEASURES

My task today is to address the question of evidence on which Qatar relies to request provisional measures.

1. In their remarks to you yesterday, the Agent for the United Arab Emirates, as well as Mr. Olleson and Professors Shaw and Treves all put before you the significant and concrete evidence demonstrating that the factual assumptions on which Qatar bases its requests in these proceedings are utterly false. Qatari citizens were not expelled "en masse" from the UAE, families are not separated, Qatari students remain studying in UAE universities in large numbers, Qatari-owned businesses and properties in the UAE remain in operation and under their owners' control, and Qatari citizens are able to travel to and from the United Arab Emirates.

2. In response, Qatar has put before you very little probative evidence of the dire circumstances their legal counsel have described, relying instead on speculative assertions derived from statements made by human rights organizations largely during the first few months of the crisis. This failure should be sufficient to raise significant doubts as to the plausibility of their factual assertions, particularly in relation to the circumstances which prevail now. That conclusion, however, is only reinforced when considering the weakness of the evidence they have now entirely relied upon to establish the alleged discriminatory treatment of Qatari citizens by the United Arab Emirates.

3. Other than various political statements by Qatar's leaders, Qatar's request relies largely on two categories of evidence which are to be found or referred to in the various attachments to its Application.

4. The first category of evidence, and the one on which Qatar most heavily relies, includes the five reports issued by Qatar's own National Human Rights Committee (the "NHRC"). For purposes of establishing that the UAE has conducted itself towards individual Qataris in such a way as to justify the ordering of the requested provisional measures against it, use of these reports by the Court would be highly problematic. Three distinct points should be noted.

5. *First*, there is the self-evident fact that the NHRC is an entity formed by, funded by and subject to the control of the Qatari Government. It has quite obviously taken the side of its Government in its political dispute with the Quartet of States. This is evident even in the politicized language it uses in its reports, which tows the government line. It writes of the measures taken against Qatar by the UAE, Saudi Arabia, Bahrain and Egypt as a "siege" and a "blockade", mimicking the Qatari government's mischaracterization of measures which in no way seek to stop the passage of vessels or aircraft to or from Qatar.

6. And nowhere in its supposedly objective and neutral reports does the NHRC, which purports to have been in contact with hundreds of Qatari citizens who it claims have lodged complaints against the UAE, take note of highly relevant facts related to those citizens' circumstances. Missing from the NHRC's reports is the evidence put before you by the UAE which demonstrates that no "mass expulsions" of Qatari citizens from the UAE in fact occurred, that the number of Qataris living in the UAE now is about the same as before 5 June 2017, that many hundreds of Qatari students continue to study at UAE universities and that many Qataris continue to travel to and from the UAE. Why has the NHRC failed to report these facts?

7. In short, and to say the least, the neutrality and credibility of the NHRC in this dispute is subject to serious doubt.

8. *Second*, the listing in the NHRC reports of the complaints by anonymous individuals about various human rights violations they claim to have suffered, which forms the foundation of each one of the NHRC's five reports Qatar has submitted into evidence, remains, for your Court, mere assertion and unverified. There is no way for this Court to know who the complaining parties are, whether any of the complaints which are grouped into the various categories is fictitious and whether any of them could be substantiated. More importantly, however, there is no way of knowing whether any or all of the alleged complaints which may not be fictitious have by now been resolved.

9. On this last point, it should be noted by the Court that some 85 ***percent*** of the complaints cited by the NHRC as having been reported to it in relation to the UAE were lodged prior to

30 August 2017, and more than half of those were reported prior to the end of June 2017[41]. There is no way of knowing from the NHRC reports whether any of the complaints registered have since been resolved.

10. In its most recent report, of June 2018, the NHRC did make a statement about the current status of the alleged complaints against all Quartet countries, many of which were made up to a year ago, by simply noting that "most of the cases affected by the current situation remain unresolved"[42], without giving any further detail. Leaving aside the lack of specificity of this statement, it is highly significant that the only support the NHRC gives for that assertion, made in June 2018, is a report based on the visit of an OHCHR technical group to Qatar in November 2017, that is, more than seven months ago. So the question remains, even if some of the complaints collected by the NHRC which relate to the UAE were valid, have those complaints been resolved through the facilities the UAE set up to accommodate individual Qataris? The evidence Qatar has provided to this Court sheds no light on this very relevant question.

11. Then there is the matter of the anonymous, and impossible to verify, complaints which each NHRC report lays out. Qatar's counsel noted several of these cases in its first-round pleadings. But there are noticeable inconsistencies in the manner in which several of these stories were read aloud to the Court. For example, Lord Goldsmith recounted the predicament of Ms S. A., who he described as a Qatari lady whose husband and four children are Emiratis, and who happened to be traveling outside the UAE on 5 June 2017[43]. "Since that date", said Lord Goldsmith, "Ms S. A. has been unable to return to the UAE. Ms S. A. has therefore been separated from her children *for over a year*"[44]. But how does Lord Goldsmith know this? The evidence he cites comes from the third NHRC report, covering the period from 29 June to around 30 August 2017. There is no further evidence in the record on which to state that Ms S.A. *remains* separated

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[41] ***See National Human Rights Committee, 100 Days Under the Blockade, Third report on human rights violations caused by the blockade imposed on the state of Qatar, 30 Aug. 2017, p. 5, AQ, Ann. 12.***

[42] AQ, Ann. 22. ***NHRC, Fifth General Report, Continuation of human rights violations: A year of the blockade imposed on Qatar, June 2018, p. 22.***

[43] CR 2018/12, p. 56, para. 19 (Goldsmith). See also CR 2018/12, p. 41, para. 30 (Amirfar), referring to the same example as extracted from National Human Rights Committee, *100 Days Under the Blockade, Third Report on Human Rights Violations Caused by the Blockade Imposed on the State of Qatar*, 30 Aug. 2017, p. 5; AQ, Ann. 12.

[44] CR 2018/12, p. 56, para. 19 (Goldsmith).

from her family. Lord Goldsmith therefore reaches a conclusion which is clearly not supported by the facts.

12. Similarly, Ms Amirfar discusses the case of two Qatari brothers, Mr. B. Th**.** and Mr. A. M., who she says inherited property located in the UAE from their father but who are physically unable to appear before tribunals in the UAE and as a result their rights "*have yet* to be resolved in probate, depriving them of the value, title and access to rental properties and the lease revenues to which they are entitled"[45]. But, again, how does Ms Amirfar know all this? The evidence she cites, from the fourth NHRC report, covers the period from around 1 September to 5 December 2017. There is no evidence that, as she asserts, the inheritance of the brothers has yet to be resolved. It may very well have been in the intervening seven months. Furthermore, for her to assert that the brothers have been physically unable to appear before UAE tribunals to resolve this matter is not mentioned at all in the evidence Qatar relies on[46]. This was another purely invented fact.

13. These embellishments of the evidence would appear to have a very specific purpose. That is to create an impression — against the evidence — that complaints lodged up to a year ago continue unresolved, and thus to distract the Court's attention from the evidence that the mitigation measures taken by the UAE have been highly effective and that it is undoubted that complaints which may have been made have now largely been resolved. It is to that issue that I would now like to turn.

14. The *third* significant point about the NHRC reports is that, as inherently unreliable as we say they are, there is the highly relevant fact that since September of last year, the number of complaints recorded by the NHRC itself has dramatically fallen. For example, since 1 September 2017, that is ten months ago, according to the NHRC there have been *no* complaints recorded

[45] CR 2018/12, p. 44, para. 44 (Amirfar).

[46] 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; AQ, Ann. 17.

against the UAE about "work" or "residency" matters, only two complaints about health care and only four complaints about "family separation". Four "complaints" in the last ten months[47].

15. Since 6 December 2017, the number of complaints has fallen further. Since then, more than six months prior to filing its request for provisional measures, not a single complaint was recorded as having been received by the NHRC against the UAE concerning "residency" matters, "work" matters or "health" care matters, and only two complaints regarding "education" and "family separation" matters were said to have been received[48]. Moreover, it must also be kept in mind that, according to the NHRC itself, the number of complaints it has recorded in relation to the UAE includes complaints lodged by *both* Qatari nationals and others, so it is unknown how many of the complaints it has cited actually relate to Qatari nationals[49].

16. The following table, which you can see on the screen, sets out the number of complaints the NHRC has received in relation to the UAE (by both Qataris and non-Qataris) during each of the successive periods covered by its five reports. We have compiled the information presented using the NHRC tables, but instead of showing the cumulative number of complaints since 5 June 2017, as the NHRC reports do, we have listed in a single table the number of alleged new complaints arising during each successive period[50]:

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[47] Compare tables in NHRC, *100 Days Under the Blockade, Third Report on Human Rights Violations Caused by the Blockade Imposed on the State of Qata*r, 30 Aug. 2017, p. 4; AQ, Ann. 12; 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. 5; AQ, Ann. 17 and NHRC, *Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar*, June 2018; p. 13;AQ, Ann. 22.

[48] Compare tables in NHRC, *100 Days Under the Blockade, Third Report on Human Rights Violations Caused by the Blockade Imposed on the State of Qatar*, 30 Aug. 2017, p. 4; AQ, Ann. 12; 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. 5; AQ, Ann. 17 and NHRC, *Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar*, June 2018, p. 13; AQ, Ann. 22.

[49] ***~~AQ, Ann. 8, p. 8.~~ NHRC, Second Report regarding the Human Rights Violations as a Result of the Blockade on the State of Qatar, 15 July, p. 8, AQ, Ann.8***.

[50] See tables in NHRC, First Report Regarding the Human Rights Violations as a Result of the Blockade on the State of Qatar, 13 June 2017, p. v; AQ, Ann. 5; NHRC, Second Report Regarding the Human Rights Violations as a Result of the Blockade on the State of Qatar, 1 July 2017, p. 8; AQ, Ann. 8; NHRC, *100 Days Under the Blockade, Third Report on Human Rights Violations Caused by the Blockade Imposed on the State of Qata*r, 30 Aug. 2017, p. 4; AQ, Ann. 12, 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. 5; AQ, Ann. 17 and NHRC, *Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar*, June 2018, p. 13; AQ, Ann. 22.

Period	Education	Ownership/ Property	Family Separation	Travel	Health	Religious Practices	Work	Residency
5–13 June 2017	16	35	21	46	0	0	3	0
14–28 June 2017	69	130	31	150	1	0	4	1
29 June–30 Aug 2017 ("100 days")	45	202	26	111	1	0	1	3
1 Sept–5 Dec 2017	16	56	2	27	2	0	0	0
6 Dec 2017–23 May 2018	2	35	2	14	0	0	0	0

17. What the NHRC's own statistics tell us about the incidence of complaints since 5 December of last year arising under the various categories of human rights set out in Article 5 of the Convention which Ms Amirfar raised in round 1 is that they have dramatically dropped, and in some cases disappeared altogether. For example, since 5 December 2017, the NHRC has registered the following numbers of complaints supposedly involving the UAE:

(a) under Article 5 *(d)* (iv) of the Convention, right to family life: *two complaints*[51];

(b) under Article 5 *(e)* (iv) of the Convention, right to medical care: *no complaints*[52];

(c) under Article 5 *(e)* (v) of the Convention, right to education: *two complaints*[53];

(d) under Article 5 *(e)* (i) of the Convention, right to work: *no complaints*[54];

(e) under Article 5 *(a)* of the ~~***CERD***~~ ***Convention***, right to equal treatment before tribunals: *one complaint*, but in reality this cannot be recorded as a complaint against the UAE ***at*** all ***as*** it

[51] Compare tables in NHRC, *100 Days Under the Blockade, Third Report on Human Rights Violations Caused by the Blockade Imposed on the State of Qatar*, 30 Aug. 2017, p. 4; AQ, Ann. 12, 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. 5; AQ, Ann. 17 and NHRC, *Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar*, June 2018, p. 13; AQ, Ann. 22.

[52] Compare tables in NHRC, *100 Days Under the Blockade, Third Report on Human Rights Violations Caused by the Blockade Imposed on the State of Qatar*, 30 Aug. 2017, p. 4; AQ, Ann. 12; 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. 5; AQ, Ann. 17 and NHRC, *Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar*, June 2018, p. 13; AQ, Ann. 22.

[53] Compare tables in NHRC, *100 Days Under the Blockade, Third Report on Human Rights Violations Caused by the Blockade Imposed on the State of Qatar*, 30 Aug. 2017, p. 4; AQ, Ann. 12; 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. 5; AQ, Ann. 17 and NHRC, *Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar*, June 2018, p. 13, Ann. 22.

[54] Compare tables in NHRC, *100 Days Under the Blockade, Third Report on Human Rights Violations Caused by the Blockade Imposed on the State of Qatar*, 30 Aug. 2017, p. 4; AQ, Ann. 12; 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. 5; AQ, Ann. 17 and NHRC, *Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar*, June 2018, p. 13;AQ, Ann. 22.

relates to an inheritance issue and, in the description provided by the NHRC, does not even mention some inability to appear before a tribunal[55].

18. A final word about the content of the NHRC reports which should be kept in mind is that, while they may record complaints supposedly involving the UAE, they do not purport to investigate whether the complaints are true or determine whether any harm the complaining parties say they have suffered was actually caused by the UAE. This is made clear in the 5 December 2017 NHRC report, which states that the NHRC refers all the complaints it receives to the Compensation Claims Committee which was set up by Qatar for that purpose[56]. It is the Compensation Claims Committee which has been given the responsibility of "investigat[ing] complaints from a legal point of view to ascertain whether it was the blockade *[sic]* that caused harm to the injured parties"[57]. Qatar has conspicuously not submitted any evidence from the Compensation Claims Committee and thus it is not possible to ascertain, even with respect to the few complaints which have been filed over the last seven months, whether there is so much as a shred of evidence that might support those complaints.

19. You have heard the evidence about the establishment of the telephone line and the significant number of Qataris, some 99 ***percent*** of those who have applied thus far in 2018, who have been able to move back and forth between Qatar and the UAE[58]. You have also heard that, in complete contradiction to the allegations made by Qatar, the number of Qataris residing in the UAE now is about the same as before 5 June 2017, and that there are some 694 Qatari nationals studying in the UAE[59].

20. It cannot be a coincidence that as the understandable confusion and perhaps uncertainty arising out of the initial rupture in political relations between Qatar and the UAE subsided and those Qatari individuals having family, business or educational ties in the UAE understood that they could carry on with those activities as before, the number of Qataris complaining to the NHRC

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[55] 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; AQ, Ann. 17.

[56] ***Ibid., p. 4.***

[57] ***Ibid.***

[58] CR 2018/12, p. 34, para. 23 (Treves).

[59] CR 2018/12, p. 33, para. 18 (Treves); CR 2018/12, p. 59, para. 61 (Shaw).

has declined, and dramatically so. This, in any case, is the only reasonable conclusion to draw from the evidence placed before the Court.

21. The combination of the evidence I have just described — both that submitted by Qatar and that submitted by the UAE — leads one *not* to the conclusion that the UAE has indiscriminately targeted, and continues to target, Qataris and excluded them en masse from the UAE, but rather to the conclusion that, while serious political difficulties remain between the two governments, the UAE has taken care to ensure that those difficulties do not negatively impact the rights of individual Qatari citizens, and that the measures it has taken to safeguard those rights in the UAE have been highly effective.

22. The remainder of the evidence relied upon by Qatar consists of statements by Amnesty International and Human Rights Watch, and a report by a technical group from the Office of the High Commissioner for Human Rights (the "OHCHR"), following their respective visits to Qatar during 2017, as well as an August 2017 letter addressed to the Government of the UAE by six Special Rapporteurs from the OHCHR. These will be dealt with in turn.

23. The first statements relied upon by Qatar were made by Amnesty International and reported in the press on 19 June 2017, that is just two weeks after the break in relations between the UAE and Qatar and one week after the procedures for use of the telephone hotline were announced[60]. Other than the limited information which was available to the Amnesty International deputy director who made the statements, reflected in the limited detail he provided, these statements were obviously made in the immediate, and undoubtedly confused, aftermath of the break in diplomatic relations. Moreover, they cannot be regarded as credible evidence of the circumstances of Qatari citizens in the UAE following that date, let alone now, which as the evidence provided by the UAE has demonstrated, is much the same as it was before 5 June 2017. Moreover, they do not address the question whether any of the difficulties noted have since been resolved. These considerations are of course highly relevant given that Qatar's Request for provisional measures alleges the existence *now* of circumstances which pose an imminent threat of irreparable harm to the rights of Qataris protected under the Convention.

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[60] Amnesty International, *Gulf/Qatar Dispute: Human Dignity Trampled and Families Facing Uncertainty as Sinister Deadline Passes*, 19 June 2017, p. 3; ***AQ,*** Ann. 6.

24. A second set of statements relied upon by Qatar was made by Human Rights Watch in July 2017, just about a month after the break in relations between the UAE and Qatar[61]. These brief statements, again, made almost a year ago, cannot possibly be regarded as credible evidence of the circumstances prevailing in the UAE for Qatari citizens today, particularly in light of the evidence showing that Qatari citizens are living their lives in the UAE today much the same as they were before.

25. Moreover, this report, in fact, makes no specific allegations against the UAE's treatment of Qatari citizens within the UAE other than noting several cases of students who said they had to interrupt their education and return to Qatar. Have these difficulties been resolved? The report, of course, does not shed light on that question. But the evidence provided by the UAE in these proceedings, showing that all UAE educational institutions were instructed to establish contact with any Qatari students who had interrupted their studies to advise them that they were welcome to return, and the almost 700 Qatari students who are now enrolled in UAE universities, strongly suggests that the difficulties of the students which are reported must have by now been resolved[62].

26. The third evidentiary document relied upon by Qatar is a letter from six Special Rapporteurs from the OHCHR, dated 18 August 2017, which Qatar's counsel quoted repeatedly during round 1 of their pleadings[63]. This letter contains no probative evidence whatsoever. It simply reports a series of allegations which had been made against the UAE — presumably by Qatar —, and conspicuously noted that the Special Rapporteurs "do not wish to prejudge the accuracy of these allegations"[64]. "Allegations". Moreover, the UAE strongly contested the allegations set out in the letter in a formal reply[65]. In that reply, and in response to the several questions raised, the UAE clarified, among other matters, that:

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[61] CR 2018/12, p. 41, para. 30 (Amirfar); Human Rights Watch, ***Qatar: Isolation Causing Rights Abuses***, 12 July 2017, p. 5; ***AQ,*** Ann. 10.

[62] CR 2018/12, p. 59, para. 61 (Shaw).

[63] Joint Communication from the Special Procedures Mandate Holders of the Human Rights Council to the United Arab Emirates, 18 Aug. 2017; AQ, Ann. 11; CR 2018/12, p. 23, para. 19 (Donovan); CR 2018/12, p. 36, para. 18 (Amirfar); ~~***p. 39,***~~ CR 2018/12, ***p. 39,*** para. 24 (Amirfar); CR 2018/12, p. 55, para. 15 (Goldsmith).

[64] CR 2018/12, p. 56, para. 56 (Shaw), citing Joint Communication from the Special Procedures Mandate Holders of the Human Rights Council to the United Arab Emirates, 18 Aug. 2017; AQ, Ann. 11.

[65] State reply to the Joint Communication from the Special Procedures Mandate Holders of the Human Rights Council concerning the allegations that the human rights of Qataris citizens have been violated, 18 Sept. 2017; AQ, Ann. 14.

(a) "mixed Emirati-Qatari nationalities families [are allowed] to remain in the United Arab Emirates"[66].

(b) "Qatari nationals suffering from an illness have the right to complete their treatment at hospitals in the United Arab Emirates"***[67].***

(c) The measures applicable to Qatari students was being assessed[68]. As the evidence which I have just mentioned has shown, that assessment resulted in a directive to all UAE universities to contact any Qatari students who had left the UAE and to invite them to return[69].

(d) "Qatari nationals who have property or interests in the United Arab Emirates are entitled to appoint a lawyer or any other person they deem suitable to manage those assets. There is no basis in the allegation that Qatari nationals have been denied access to their property or have been prevented from managing their property. All such property is registered in line with Emirati law"[70].

27. Qatar also heavily relies on a report prepared by a team sent by the OHCHR on a "Technical Mission" to Qatar from 17 to 24 November 2017. Once again, this report relates to events which occurred over seven months ago and its relevance to the circumstances now ***is*** highly questionable. Moreover, it is based on information received from the NHRC and other Qatari government entities. As we have just seen, since the date of the OHCHR technical mission to Qatar in November 2017, the NHRC itself has registered a dramatic decrease in the number of complaints relating to the UAE. The dramatic decline in the number of complaints since then is not, obviously, reflected in the OHCHR report, nor of course did the OHCHR have the benefit of the evidence the UAE has presented demonstrating the extent to which individual Qataris have been able to carry on their lives in the UAE, which is the only reasonable explanation to draw from this decrease in complaints.

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[66] *Ibid*., p. 3.

[67] ***Ibid.***

[68] *Ibid.*

[69] ***~~Amnesty International, One Year since the Gulf Crisis, Families are Left Facing an Uncertain future, available at: https://www.amnesty.org/en/latest/campaigns/2018/06/one-year-since-gulf-crisis-qatar-bahrain/~~. CR 2018/13, p. 13, para. 14 (Shaw), citing to Exhibit 8 of the UAE's submission to the Court, dated 25 June 2018.***

[70] *Ibid*., p. 4.

28. Finally, with respect to the 5 June 2018 Amnesty International report that Qatar has included in its slides this morning, the UAE would like to bring the Court's attention to the full text of that report[71]. This is included in the judges' folders at tab 1. As the Court will appreciate, the report, and the phrase Qatar relied on this morning, that "a year on the situation has not improved", is vague and not specific to the UAE; rather it refers in general to the region. Moreover, the only example included in the report concerns Bahrain, not the UAE.

Mr. President, Members of the Court, that concludes my remarks. I thank you for your careful attention and I would ask you now to call upon Professor Shaw in order to address the questions of irreparable prejudice and to make some specific comments on facts and evidence.

The PRESIDENT: I thank Mr. Buderi, and I now give the floor to Professor Shaw. You have the floor.

Mr. SHAW:

1. Mr. President, Members of the Court. I will address three issues, briefly. First, the conditions required for the indication of provisional measures; secondly, the purported "collective expulsions" and, finally, some evidential issues as they affect the requests made by Qatar.

1. Requirements for provisional measures

2. Lord Goldsmith has sought to belittle my comments on the requirements for provisional measures by saying basically that I would only accept the validity of requests for death penalty and genocide[72]**.** ***This is*** clearly not so. While I do say that such situations are obvious candidates for provisional measures, in other situations more attention has to be paid to the precise factual matrix. The balance is more delicate, the situation more complicated. The Court has to be convinced that a real and imminent risk exists, actually exists, of irreparable prejudice. I do not understand Qatar to be saying that the Court can grant interim relief without complying with a number of essential requirements.

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[71] ***Amnesty International, One Year since the Gulf Crisis, Families are Left Facing an Uncertain Future, available at: https://www.amnesty.org/en/latest/campaigns/2018/06/one-year-since-gulf-crisis-qatar-bahrain/.***

[72] CR 2018/14, p. 31, para. 3 (Goldsmith).

3. In order for irreparable prejudice to be shown, it is necessary to demonstrate the following. First, that damage or prejudice might be caused should the provisional measures not be adopted. Second, that such prejudice must be irreparable, that is, it cannot be remedied before the merits stage of the particular case. And third, that the provisional measures sought must actually be necessary in order to avoid such prejudice. What is to be prevented is irretrievable harm to the rights in question[73]. Lord Goldsmith objects to my calling the test "stringent"[74], but in truth, the Court has accepted that great care must be exercised before issuing an order of such a nature before its jurisdiction has been established and *a fortiori* before the merits stage. The very way in which the Court expresses the requirements consistently demonstrates this — "the power of the Court to indicate provisional measures will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights in dispute before the Court gives its final decision"[75].

4. This is not the phraseology of a lax exercise of the power. Whether one regards this as stringent or exacting or to be used with great caution is mere semantics.

5. Lord Goldsmith referred to the *Equatorial Guinea* v. *France* case, and the statement that irreparable prejudice might include a situation where it is not possible to restore the *status quo ante*[76]. Exactly. This underlines one of my points which is that ***~~were~~ where*** a remedy in whatever form is possible then provisional measures should not be indicated. Even assuming Qatar's facts — which we don't —, issues relating to family separation, medical care and education are remediable in one form or another prior to the merits stage, as a matter of principle. We do not of course accept Qatar's characterization of the facts.

6. It seems we also have a difference over what is meant by risk. We say that the standard is high. Lord Goldsmith says the opposite. He has referred to "not imagined" or "supposed"[77]. Well,

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[73] *Vienna Convention on Consular Relations (Paraguay* v. *United States of America), Provisional Measures, Order of 9 April 1998, I.C.J. Reports 1998*, p. 263; declaration of Judge Koroma.

[74] CR 2018/14, p. 33, para. 7 (Goldsmith).

[75] *Jadhav (India* v. *Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, p. 243, paras. 49 and 50 and *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1168, para. 82.

[76] CR 2018/14, p. 34, para. 11 (Goldsmith).

[77] CR 2018/14, p. 34, para. 11 (Goldsmith).

Mr. President, on that basis, there is very little that does not constitute a real risk. He cites in support *Equatorial Guinea* v. *France*[78] to show that the standard has, in effect, declined to "not inconceivable". But that precise term was used in the specific context of a number of previous incursions into the diplomatic premises in question so that in the particular circumstances of repetition, the likelihood of a further incursion was high. The risk was high. The standard high. At the end of the day, however, what counts are the facts and if the facts do not match the legal requirements, provisional measures cannot lie.

7. In addition, merely labelling an issue as one of human rights as such does not suffice to change the established conditions, especially as the facts presented do not suffice to support the accusations made.

8. Lord Goldsmith finally here criticizes my general approach to the grant of provisional measures[79]. I argued that the Court has taken a restrictive or careful approach, rather than a profligate one. As I have said, the very way that the Court has regularly formulated the test shows that caution is the watchword, not recklessness in the indication of provisional measures.

9. I turn now to address certain evidential matters referred to by Lord Goldsmith.

2. Key facts

10. He has commented upon the statement of the Foreign Ministry of the UAE of 5 June 2017[80]. He draws from the sentence calling upon Qataris to leave for precautionary security reasons, serious conclusions. We say the following. First, the real reason for the instability and concern and even trepidation experienced resides not in the statement as such but in the blatant violation by Qatar of the Riyadh Agreements and the continuing support for terrorism despite numerous attempts by the Four States to deal with this in a collegial way. Such actions by Qatar could not remain without consequences, as it had been informed. This is what generated the difficulties in the region. The 5 June statement, a mix of political expression and legal decision making, was a reaction to this.

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[78] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1169, para. 89.

[79] CR 2018/14, p. 34, para. 13 (Goldsmith).

[80] CR 2018/14, p. 35, paras. 15 *et seq.* (Goldsmith).

11. Secondly, this statement was focused on actions being taken against the State of Qatar, from the breaking of diplomatic relations to the adoption of a number of countermeasures. It is important to note that, where the actions were intended to have an effect upon relevant individuals or organizations (the airspace and sea closure measures), binding measures were adopted. Implementation then followed. Not so with regard to the statement as to Qataris leaving the UAE. No action of any kind ensued. Not legislation nor administrative order, rule or regulation, nor actual implementation.

12. Lord Goldsmith says that the 5 June statement has not been withdrawn. In a sense there was no need. No legislative or administrative measures were taken, no general policy of expulsion introduced. The political sentence fell away. If fear has indeed been generated, Mr. President, the source is not the measures taken by the UAE against Qatar, but the reasons why such measures were introduced.

13. Lord Goldsmith refers to the special telephone line and the fact that there were in total over 30,000 calls. Clearly, no fear here. No reluctance to contact the line. No trepidation, but rather an attempt made in good faith by the UAE to resolve some of the consequences resulting from the political situation. And an attempt which has resulted in a significant number of requests being made by Qataris to enter or re-enter the UAE, as admitted by Lord Goldsmith[81]. Not ineffective, in his words, but rather in the circumstances, a not unreasonable way of proceeding.

14. Lord Goldsmith asked why would the UAE oppose the indication of provisional measures if there were no problems. The answer to this disingenuous question is that it is simply part of Qatar's political campaign to distract attention from the reasons why the Four States adopted the measures they did. Further, the UAE does not accept the underlying basis of the request for provisional measures, well documented in both the Request and the Application, that widespread discrimination has taken and is taking place, never mind the accusation, still maintained, I notice, in the face of the facts and without any evidence presented, that a "collective expulsion" has taken place.

[81] CR 2018/14, p. 36, para. 24 (Goldsmith).

15. Let me conclude with a few comments on specific factual matters, making the important contrast between the standard of our evidence as compared with that of the other side.

3. Specific factual matters

16. Mr. Buderi has just addressed the question of evidence generally. I will deal with a few specific issues to highlight the different ways in which the two sides have sought to demonstrate their case.

17. Qatar in its request for the eighth provisional measure called upon, and I paraphrase, the UAE to cease and desist from measures that, directly or indirectly, prevent Qataris from accessing, enjoying or managing their property in the UAE, and to ensure that Qataris may authorize valid powers of attorney in the UAE, renew business leases, and renew generally their leases[82].

18. Qatar refers to the OHCHR report, which states that Qataris were forced to abandon businesses and personal property in the UAE[83]. We have said in our first round that this report also notes that the Qatari chamber of commerce and the Government of Qatar have been helping such businessmen in a variety of ways[84].

19. Qatar admits that Qataris own a vast amount of property in the UAE. They purchased approximately USD 500 million worth of property in Dubai alone in 2016. However, it is said, with the ban in place, these Qatari owners have no means of ascertaining the status of their property or taking any rental income to which they were entitled.

20. It is claimed that the effect of the UAE's measures is to deprive Qataris of all ownership rights[85]. They can neither use the property nor sell it, because they would need to engage a non-Qatari to act on their behalf, but Qataris cannot enter into the power of attorney needed to do so.

21. These are serious claims. But what is the evidence? First, as to the claim that Qataris cannot ascertain the status of their property, the evidence is from the third Report of the NHRC, but

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[82] Request for the Indication of Provisional Measures (RPMQ), 11 June 2018, para. 19 *(a)* (viii) and CR 2018/12, p. 43, paras. 41 *et seq.* (Amirfar).

[83] RPMQ, para. 8.

[84] AQ, Ann. 16, Dec. 2017, paras. 40-41 and CR 2018/13, p. 69, para. 53 (Shaw).

[85] CR 2018/12, p. 44, para. 42 (Amirfar).

an examination of the cited page from this report refers only to three Qatari brothers, who own property in Sharjah and their efforts to obtain financial sums which, it is alleged, have been frozen. The three brothers were also mentioned by Lord Goldsmith, another example of a few anonymous unverified examples going rather a long way[86].

22. Mr. President, we have dealt with the remittance issue in our first round pleading and demonstrated the high level of cash flows between the Central Bank of the UAE and Qatari banks[87]. These brothers also claim that they cannot access their property or get rental income. The latter point has been dealt with. The former point is impossible to verify in view of the anonymity of the claimants. As to access in general, there is no bar on entry of Qatari nationals, simply enhanced requirements as to obtaining permission to enter. That is it.

23. Secondly, it is claimed that Qataris cannot enter into the power of attorney as this must be authenticated by a UAE embassy and the Embassy in Qatar is closed, and other embassies are refusing to authenticate such documents. The evidence for this is again the OHCHR report, but the page cited simply says that "legal cooperation has been suspended, including powers of attorney"[88]. No authority is given for this. Our evidence is not anecdotal, anonymous and unsourced. As our Agent declared yesterday, while the UAE Embassy is indeed closed, other embassies in the region and elsewhere are open and able and willing to authenticate documents[89]. Professor Treves yesterday has shown that it is possible to use the UAE Embassy in Kuwait for the validation of powers of attorney[90], and examples of such documents can be seen in tab 3.3.

24. Turning to the question of business licences, Qatar has simply hinted that it is not possible for Qataris to renew licences[91]. No effort has been made to substantiate this in the Application, the Request or the pleadings. But something should be said briefly to demonstrate that there is no difficulty with Qataris obtaining licences. In particular, we can say that, from 5 June

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[86] See also CR 2018/12, p. 58, para. 27 (Goldsmith).

[87] CR 2018/13, p. 69, para. 53 (Shaw).

[88] OHCHR Technical Mission to the State of Qatar, 17-24 Nov. 2017, *Report on the Impact of the Gulf Crisis on Human Rights*, Dec. 2017, para. 40; AQ, Ann. 16.

[89] CR 2018/13, p. 14, para. 17 (Alnowais) and see also Exhibit 5 of the UAE's submission to the Court, dated 25 June 2018.

[90] CR 2018/13, p. 33, para. 22 (Treves).

[91] RPMQ, para. 19 *(a)* (viii) and CR 2018/12, p. 43, para. 41 (Amirfar).

2017 until 18 June 2018, there were 390 commercial licensing operations in the Emirate of Dubai alone for Qataris, with the vast majority being for licence renewals. [Exhibit 3.] Again, we can put forward official statistical evidence to counter innuendo, assertion and rhetoric.

25. I return now in this discussion of evidence to the question of separated mixed families. Qatar has made much of this, noting that there have been "numerous cases of forced separation of Qatari families, which continues to this day"[92]. This issue is reflected in the fifth request. Qatar's evidence is slight, relying upon the NHRC's report, which mentions two particular cases, with no independent verification and assertions of 82 cases[93].

26. We can present solid attested cases. Exhibit 3, which we have presented to the Registry, contains 67 pages of official documentation containing examples of Qatari-Emirati families being allowed to enter or re-enter the UAE for humanitarian reasons. Again, evidence faces assertion.

27. This is not to deny that such families have faced some difficulties in the current situation. However, we reiterate that such problems flow from Qatar's behaviour and the responsibility for the circumstances as they are now must be placed firmly at the door of the Applicant. Mitigation efforts have been put forward, have been put into place in good faith, and as Mr. Buderi has shown, the number of complaints made has declined from the early days of the crisis. It is accepted that Qatar too has adopted measures to ameliorate the difficulties and I am sure that is welcomed by its citizens. By the same token, of course, such measures impact upon the requirements for provisional measures since prejudice cannot be irreparable if it has been repaired by the Applicant.

28. In conclusion, it must be said that the resolution for the current political crisis and its consequences lies squarely in the hands of Qatar. They started it with their violation of the Riyadh Agreements and support for terrorism. They can end it.

29. And on this note, Mr. President, I thank you for your kind attention. I have reached the end of my pleading and would ask you to please call our Agent for his concluding comments and formal submission.

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[92] RPMQ, para. 7.

[93] CR 2018/13, p. 67, para. 42 (Shaw).

The PRESIDENT: I thank Professor Shaw. I now give the floor to the Agent of the United Arab Emirates, His Excellency Mr. Saeed Ali Alnowais, for the final submissions of his Government. You have the floor.

Mr. ALNOWAIS:

1. Mr. President, distinguished Members of the Court**.** I will conclude the UAE's submissions in this matter by providing some brief closing remarks.

2. My country prides itself on being a model of openness and inclusiveness in the region. It is currently home to citizens of almost every nationality. The UAE exercises considerable care with respect to the protection of the rights of residents and visitors of all nationalities within its borders. For these reasons, the UAE has taken all necessary steps to ensure that its dispute with Qatar has no impact on the rights of Qatari citizens. While Qataris are now subject to new UAE entry requirements, their rights within the UAE otherwise remain unaffected.

3. I urge you to carefully examine the records that we have submitted to the Court, which show~~s~~ that Qataris continue to visit, reside and exercise their rights in the UAE. Qatar has failed to provide any evidence of mass expulsions or deportations or of specific actions taken to interfere in the enjoyment by Qataris of their civil, property or business rights under UAE law.

4. Unfortunately, as Qatar has done in other international institutions, it has filed its claims with this Court to distract attention away from its own unlawful conduct and for the purpose of mounting a public relations campaign against those States that have been most critical of its policies.

5. In my opening remarks yesterday, I provided to the Court an illustrative example of Qatar's wrongful conduct. I told the Court that in April 2017 Qatar had paid US$1 billion to a large number of terrorist and terrorist affiliate entities. Mr. President, this payment was made only two months prior to the break in relations and was one of the reasons the UAE and many other countries have determined to no longer maintain relations with Qatar. Qatar's Agent completely failed to address this incident.

6. Qatar's Agent also indicated that the UAE's views regarding Qatar "are not shared by the most prominent international institutions, including the United Nations"[94]. Perhaps the Agent should ask his authorities regarding Qatar's compliance with the United Nations Security Council Sanctions Lists. Mr. President, I will provide two brief examples:

(a) Al-Qaida financier Khalifa al-Subaiy, designated as a terrorist by the United Nations[95]. After his designation, al-Subaiy continued to find safe haven inside Qatar. Al-Subaiy publicly supports fundraising initiatives for al-Nusra Front and other jihadist militias in Syria, alongside a network of known al-Qaida supporters in Qatar.

(b) Al-Qaida financier Abd al-Rahman al-Nu'aymi, ***which also facilitated his movements*** designated as a terrorist by the United Nations[96]. Like al-Subaiy, al-Nu'aymi was also hosted by Qatar, which also facilitated his movements outside of Qatar to meet with other al-Qaida supporters. Al-Nu'aymi has issued public statements calling for support to terrorist organizations in Syria, Iraq and elsewhere. Incredibly, while acting as a terrorist financier, al-Nu'aiymi was the founder of the Alkarama human rights organization in Geneva and also employed by Qatar as the president of the Qatar Football Association[97]. After coming under increasing international pressure, Qatar finally listed al-Nu'aymi as a designated terrorist only in March 2018, years after he was first listed by the United Nations, and nine months after the UAE and other countries ended their diplomatic ties with Qatar.

7. Mr. President, it is abundantly clear why the UAE and many other countries no longer have relations with Qatar. We do not ask Qatar to "hand over its sovereignty"[98], as its Agent alleges. We ask Qatar to act as a responsible member of the international community.

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[94] CR 2018/14, p. 44, para. 2 (Al-Khulaifi).

[95] United Nations Security Council Listing - QDi.253 KHALIFA MUHAMMAD TURKI AL-SUBAIY https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list/summaries/individual/khalifa-muhammad-turki-al-subaiy

[96] United Nations Security Council Listing - QDi.334'Abd al-Rahman bin 'Umayr al-Nu'aymi, https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list/summaries/individual/%27abd-al-rahman-bin-%27umayr-al-nu%27aymi

[97] See *David Blair and Richard Spencer, Former head of human rights charity accused of leading double life as terrorist fundraiser*, 20 September 2014, https://www.telegraph.co.uk/news/worldnews/middleeast/qatar/11110928/Former-head-of-human-rights-charity-accused-of-leading-double-life-as-terrorist-fundraiser.html

[98] CR 2018/14, p. 44, para. 3 (Al-Khulaifi).

8. Mr. President, Members of the Court, turning to the matter before you today, I believe that upon a close review of the facts before you, you will find that Qatar has failed to meet the high standard that must be established for the Court to grant provisional relief. The Court has been given substantial evidence from the UAE to show that the UAE's measures against Qatari citizens effectively consist of new requirements for their entry into UAE territory.

9. Qatar conceded today that the UAE has sovereign authority to regulate entry across its borders and that the Convention does not prohibit the UAE from exercising this authority. Yet, the provisional measures requested by Qatar would severely restrict States' rights in this field. They would establish a precedent that requires all State Parties to the Convention to treat individuals from all nationalities exactly the same in all aspects of their immigration policies. This is not what the Convention requires and it is not what is reflected in State practice today.

10. Fundamentally, the UAE measures challenged here are the result of the UAE acting to protect itself from Qatar, and not distance itself from the Qatari people. The UAE's actions are in full compliance with the rules of the Convention.

11. My country reiterates its respect for this Court, for the United Nations system and affirms the UAE's commitment to its obligations as a signatory to the Convention.

12. Mr. President, in accordance with Article 60, paragraph 2, of the Rules of Court, I shall now read the United Arab Emirates' Final Submissions, which are as follows:

"In accordance with Article 60 of the Rules of the Court, for the reasons explained during these hearings, the United Arab Emirates requests the Court to reject the request for the indication of provisional measures submitted by the State of Qatar."

13. Mr. President, in closing let me thank the Registrar and his staff for their services during these proceedings; particular thanks go to the interpreters for their excellent translation.

14. We also thank you, Mr. President, and Members of the Court, for their kind attention.

The PRESIDENT:

I thank the Agent of the United Arab Emirates. The Court takes note of the final submissions of the government of the United Arab Emirates. I shall now give the floor to

Judge Cançado Trindade who has questions addressed to the Parties. Judge Cançado Trindade, you have the floor.

Judge CANÇADO TRINDADE: Thank you, Mr. President. My questions are addressed to both Parties.

1. Does the local remedies rule have the same *rationale* in diplomatic protection and in international human rights protection? Does the *effectiveness* of local remedies have an incidence under the United Nations Convention on the Elimination of All Forms of Racial Discrimination and other human rights treaties?

2. Is it necessary to address the so-called plausibility of rights in face of a *continuing situation* allegedly affecting the rights protected under a human rights treaty like the United Nations Convention on the Elimination of All Forms of Racial Discrimination?

3. What are the implications or effects, if any, of the existence of a *continuing situation* allegedly affecting rights protected under a human rights Convention, for requests of provisional measures of protection?

Thank you Mr. President.

The PRESIDENT: I thank Judge Cançado Trindade and I will now give the floor to Judge Bhandari, who has a question addressed to the United Arab Emirates. You have the floor.

Judge BHANDARI: Thank you Mr. President. This question is directed to the United Arab Emirates.

In his opening statement yesterday, the Agent of the UAE said, *inter alia*, "[a]lthough the UAE's announcement on 5 June 2017 . . . did call upon Qatari citizens to leave its territory for precautionary security reasons . . .". My question is: could the UAE please clarify what was meant by "precautionary security reasons" in the announcement of 5 June 2017? Thank you.

The PRESIDENT: I thank Judge Bhandari and I will now give the floor to Judge Crawford, who has also a question for the United Arab Emirates. Judge Crawford.

Judge CRAWFORD: Thank you Mr. President. My question is this. Is the announcement of 5 June 2017, and in particular its paragraph 2, still in effect? Has the UAE made any further announcement clarifying that Qataris resident in the UAE may elect to stay, notwithstanding paragraph 2 of that announcement? Thank you, Mr. President.

The PRESIDENT: I thank Judge Crawford. The written text of these questions will be communicated to the Parties as soon as possible. The Parties are invited to provide their written replies to these questions no later than Tuesday 3 July 2018, at 6 p.m. Any comments a Party may wish to make in accordance with Article 72 of the Rules of Court on the reply by the other Party, must be submitted to the Court not later than Thursday 5 July 2018 at 6 p.m.

This brings the present hearings to an end. It remains for me to thank the representatives of the two Parties for the assistance they have given to the Court by their oral observations in the course of these four sittings. In accordance with practice, I would ask the Agents to remain at the Court's disposal. The Court will render its order on the Request for the indication of provisional measures as soon as possible. The date on which this order will be delivered at a public sitting of the Court will be duly communicated to the Agents of the Parties. Since the Court has no other business before it today, the sitting is closed.

The Court rose at 6.15 p.m.

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