Response of the United Arab Emirates (the "UAE") to the questions of Judge Cançado Trindade:

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 International Convention on the Elimination of All Forms of Racial Discrimination and other human rights treaties?**

Recent developments in international law have broadened the scope of application of diplomatic protection to include violations of rules for the protection of human rights. The scope of application of the customary rule as to exhaustion of local remedies has consequently been broadened.

In the Court's judgment of 24 May 2007 on Preliminary objections in *Ahmadou Saido Diallo*, the Court stated:

> Owing to the substantive development of international law over recent decades in respect of the rights it accords to individuals, the scope *ratione materiae* of diplomatic protection, originally limited to alleged violations of the minimum standard of treatment of aliens, has subsequently widened to include, *inter alia*, internationally guaranteed human rights.[1]

The Court thus examined whether Mr. Diallo, claiming violation of his rights "as a result of his arrest, detention and expulsion" met the requirements for the exercise of diplomatic protection, and in particular "whether he ha[d] exhausted the local remedies available."[2]

Even within its broadened scope, the rationale of the rule, as summarized by the Court in *Interhandel*, remains to ensure that "the State where the violation occurred should have an opportunity to redress it by its own means, within the framework of its own domestic system."[3]

The same rationale underlies the exhaustion of local remedies rule in the context of international human rights law.[4]

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[1] *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Preliminary Objections, Judgment, I.C.J. Reports 2007*, p. 599, para. 39.

[2] *Id.*, para. 40.

[3] *Interhandel Case, Judgment of March 21st, 1959, I.C.J. Reports 1959*, p. 6, p. 27.

[4] See e.g., Application No. 30210/96, *Kudla v Poland*, judgment of 26 October 2000, *ECHR Reports* 2000, para. 152 ("The purpose of . . . the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity of. . . putting right the violations alleged against them before those allegations are submitted to the Court"); *Velásquez Rodríguez v. Honduras, Merits*, Judgment of 29 July 1988, *Inter-Am. Ct.H.R., Series C, No. 4*, para. 61 ("The rule of prior exhaustion of domestic remedies allows the State to resolve the problem under its internal law before being confronted with an international proceeding. This is particularly true in the international jurisdiction of human rights, because the latter reinforces or complements the domestic jurisdiction."). See also, *Viviana Gallardo et al. v. Costa Rica*, Decision of 13 November 1981, *Inter-Am. Ct. H.R., Series A, No. 101* para. 26.

Article 11(3) of the International Convention on the Elimination of All Forms of Racial Discrimination (the "Convention") provides for the applicability of the exhaustion of local remedies rule to the State-to-State procedure before the Committee on the Elimination of Racial Discrimination, specifying that remedies must be exhausted "in conformity with the generally recognized principles of international law."

While in the context of Articles 11 and 22 of the Convention, the rule applies in the framework of diplomatic protection, in which context it functions as a condition of admissibility for an international action brought by a State, in the optional procedure for individual communications under Article 14 of Convention[5] and in those human rights treaties which provide for an individual right of recourse to an international judge (as is the case of, for example, the European Convention on Human Rights[6]), exhaustion of domestic remedies constitutes a condition for the admissibility of an action by an individual. The rationale remains nonetheless the same.

Under the Convention, as is the case under other treaties and under general international law, the effectiveness of the available local remedies is a component of the rule requiring exhaustion of local remedies.[7] In particular, in addition to the reference in Article 11(3) of the Convention to the "generally recognized principles of international law", the requirement in the same provision that the remedies not be "unreasonably prolonged" refers to an aspect of the effectiveness of the local remedies requiring exhaustion.[8]

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

The question posed has to be approached first, in the light of the supposed nature of the continuing violations and, second, as a matter of procedure, in the light of the jurisdictional requirements concerned. The latter point will be dealt with in the answer to question 3.

[5] Article 14(7) of the Convention: "The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged" (emphasis added).

[6] Convention for the Protection of Human Rights and Fundamental Freedoms (1950), as amended by Protocols Nos. 3, 5, 8 and 11, Article 35 ("Admissibility Criteria").

[7] Cf. Article 15(b), International Law Commission, Draft Articles on Diplomatic Protection, *Official Records of the General Assembly*, Sixty-first Session, Supplement No. 10 (doc. A/61/10) (2006).

[8] See also GA Third Committee, A/C.3/SR.1353, para. 42 (Netherlands) (explaining that "the words 'in conformity with the generally recognized principles of international law' in paragraph 3 [of Article 22] were meant to refer to the two exceptions to the rule that available remedies must be exhausted before a case was taken to the international level. The exceptions in question were cases where numerous precedents showed that no redress was to be expected from the available remedies or where . . . application of the remedies was unreasonably prolonged.").

Concerning the first point, the following may be said. The importance of provisional measures for the protection of the rights of States and by necessary implication of the rights and interests of individuals therein contained is self-evident.[9] Protecting rights from infringement is at the core of the Court's work and cannot be ignored at any stage of proceedings before the Court. Protecting human rights should also be at the forefront of any attempt at engagement in the international legal system. The acceptance of the critical role of human rights within the international legal system is reflected in the work of the Court.[10] Violations of human rights, and a continuing situation of such violations have to be of concern to the Court in any relevant procedure before it. It is an issue with regard to which one would rightly expect the Court to be sensitive and attentive.

Side by side with this intellectual orientation, however, it must also be kept in mind that the Court is a judicial organ constrained by rules and procedures. It operates in accordance with the UN Charter, its Statute and the Rules of Court. Further, it operates within an accepted juridical environment which means that the rights (and obligations) of all relevant parties before it have to be respected. To put it another way, the rights of those suffering (or claimed to be suffering) from human rights violations, particularly continuing ones, have to be placed within the vision of the Court, but must operate in accordance with the framework established by international law. Only States can be parties before the Court in contentious proceedings and the Court when called upon to adjudicate upon a matter has to do so in the light of the rights and duties of those States that are before the Court seeking a legal determination.

As part of ensuring this balance between regard for vulnerable (or claimed vulnerable) individuals and groups on the one hand and adjudication between States in the light of their rights and obligations under international law on the other, the Court has had recourse *inter alia* to the doctrine of plausibility. It is, one may assume, an attempt to establish a standard to be reached or a necessary hurdle to be surmounted before tackling substantive issues of protection of, for example, the rights or interests of individuals, groups or States under perceived threat. In other words, assessment of the plausibility of the rights relied upon is an indispensable preliminary step needed in order to address claimed violations of rights, whatever their origin.

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[9] *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, Separate Opinion of Judge Cançado Trindade at para. 10.

[10] See e.g. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16; *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, p. 639; and *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012*, p. 422.

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?

Where it is argued that a continuous situation allegedly affecting rights under a human rights convention exists, the Court must take this into account in all gravity in approaching the case in question. However, the Court is obliged to act in accordance with the relevant rules and norms of international law. The very fact that a human rights situation exists (or is alleged) does not, and cannot, as such affect the legal framework within which the Court must function. In other words, the existence of a particular kind of dispute between the parties cannot as such deflect the Court from applying the relevant rules and processes as it understands them. There are no special rules or procedures for different kinds of cases in contentious proceedings before the Court, whose functions (as defined in Article 38, paragraph 1, of its Statute), are different from those of, for example, regional courts of human rights and which cannot substitute them when the concerned States are not bound by treaties instituting such courts.

Indeed, the Court has been faced in the past with situations that bear upon the populations of States of some real or potential severity. For example, the Court in its Order on Provisional Measures in *Land and Maritime Boundary between Cameroon and Nigeria* referred to armed incidents that had resulted in fatalities of military and civilian personnel and major material damage,[11] but nevertheless emphasized that:

> "this power to indicate provisional measures has as its object to preserve the respective rights of the Parties, pending a decision of the Court, and presupposes that irreparable prejudice shall not be caused to rights which are the subject of dispute in judicial proceedings; whereas it follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by the Court to belong either to the Applicant or to the Respondent; and whereas such measures are only justified if there is urgency."[12]

The terminology "rights which may subsequently be adjudged by the Court to belong" to either party was the way in which the Court expressed in that period what may be termed today the "plausibility" of rights.[13] The test was expressed thus by the Court most recently in the *Jadhav* case:

> "the Court must be concerned to preserve by such [provisional] measures the rights which may subsequently be adjudged by it to belong to either party.

[11] *Land and Maritime Boundary between Cameroon and Nigeria, Provisional Measures, Order of 15 March 1996, I.C.J. Reports 1996*, p. 22, para. 38.

[12] Ibid., pp. 21-22, para. 35.

[13] See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993*, p. 19, para. 34.

Therefore, the Court may exercise this power only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible."[14]

The words used reflected those used in the *Ukraine v Russia* Provisional Measures Order of 19 April 2017, a situation which indeed concerned allegation of con.inuing human rights violations.[15]

The Court has thus been consistent in requiring that provisional measures cannot be indicated where the party requesting such measures cannot persuade the Court that the rights it asserts are "at least plausible." This is so whatever the nature of the rights or alleged rights that it is claimed have been violated and this has been so even where egregious human rights violations have been asserted. There is no different standard.

It thus follows that the existence of a continuing situation allegedly affecting rights protected under a human rights treaty does not as such change or modify the conditions required for the indication of provisional measures of protection.

The UAE is focused upon the importance of the implementation of binding treaties and the fight against terrorism. In doing so, it recognizes the need for respect for the rules and principles of international law, including those relating to human rights. It denies that there has been any violation of the Convention as alleged by Qatar, whether of a continuing character or at all. Qatar has come to the Court to request the indication of provisional measures of protection. It needs to comply with the requirements of such a process. Unproven allegations have been met with clear evidence and Qatar has fallen far short of demonstrating that the conditions necessary for the grant of provisional measures by the Court have been met.

Response of the UAE to the question of Judge Bhandari:

4. **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?**

As stated during the oral arguments, the UAE on 5 June 2017 terminated relations with Qatar due to national security concerns particularly seriously felt at that time — in particular, Qatar's support for terrorism and extremism, its meddling in the internal

[14] *Jadhav Case (India v. Pakistan), Order of 18 May 2017*, para. 35.

[15] *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*, para. 63, referring in turn to *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016*, pp. 1165-1166, para. 71.

affairs of the UAE, and its propagation of hate speech. The UAE, as well as several other States, determined that these threats were serious and — despite repeated attempts by the UAE to persuade Qatar to stop and repeated commitments by Qatar to stop its actions — the threats persisted. One aspect of the UAE's 5 June 2017 announcement was a call for citizens of Qatar to leave the UAE and UAE citizens to leave Qatar and return home for precautionary security reasons.

Precaution is routinely invoked by governments — to protect food safety, to combat disease, to prevent loss from floods and other disasters and, of course, to guard against threats to their security and the stability of their governments. As explained, this particular aspect of the 5 June 2017 announcement was not subsequently implemented and a process was quickly put in place for Qataris to request approval to enter the UAE.

The entry requirements imposed on Qatari citizens are consistent with the Convention. Article 1(2) of the Convention makes plain that State parties have the right to make distinctions between citizens and non-citizens with regard to immigration and entry requirements. State Parties to the Convention routinely impose immigration restrictions on immigrants based on the countries from which they come or of which they are citizens. The Convention in Article 1(3) constitutes the sole exception to the rights of States to make distinctions based on nationality, and then only in relation to the application of laws governing "nationality, citizenship or naturalization"; however, it imposes no limitations on laws governing immigration, which are separate and apart from matters of "nationality, citizenship, and naturalization."

Response of the UAE to the question of Judge Crawford:

5. **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 the announcement?**

The announcement of 5 June 2017 is a media statement issued by the UAE Ministry of Foreign Affairs and International Cooperation ("MoFA") in support of the announcements made earlier that day by the Kingdom of Bahrain and the Kingdom of Saudi Arabia. MoFA does not have legislative authority to establish the measures described in paragraphs (2) or (3) of the announcement. The announcement therefore does not establish any of those measures. Instead, the measures that the UAE subsequently established are set forth in specific implementing instruments, including:

i. Circular no. 2/2/1023 of the UAE Federal Transport Authority – Land and Maritime, issued on 11 June 2017, regarding Qatari vessels, and the loading and unloading of cargo.

ii. The UAE General Civil Aviation Authority's Notices to Airmen (NOTAMs) A0812/17 and A0848/17, issued on 5 June 2017 and 12 June 2017 respectively, effecting the closure of UAE airspace to Qatari aircraft.

iii. Circulars issued by the UAE Central Bank (including Circulars no. 156/2017 dated 9 June 2017, no. 156/2017 dated 9 June 2017, no. 218/2017 dated 25 July 2017, no. 345/2017 dated 26 October 2017, no. 9/2018 dated 14 January 2018 and no. 131/2018 dated 22 May 2018), instituting freeze orders on terrorist funding and heightened due diligence requirements relating to Qatari banks.

None of the above instruments implement the measures described in paragraph (2) of the 5 June 2017 MoFA announcement. The power to administratively expel individuals from UAE territory falls under the authority of the Ministry of Interior by virtue of Federal Law No. 6 of 1973 Concerning Immigration and Residence (the "Immigration Law"). Following the MoFA announcement of 5 June 2017, the Ministry of Interior did not issue any administrative deportation orders against Qatari nationals based on their Qatari nationality or citizenship.

One cannot therefore speak of the MoFA announcement "being in effect" with regard to the immigration issues relevant here. Only administrative orders issued under the Immigration Law could have "effected" expulsions. And, since no such orders were issued against Qatari nationals based on their citizenship, the UAE was not required to make a further announcement regarding the ability of Qataris to remain in the UAE. The right of Qataris to remain in the UAE, and to enter upon prior application, were self-evident at the time, as is confirmed by the extensive immigration entry and exit records submitted by the UAE into evidence, and as is shown by the large number of Qataris who chose to remain in the UAE, notwithstanding the instructions issued by the Qatari embassy in the UAE for them to depart.[16]

Furthermore, to ensure that the situation was understood, and to facilitate applications for entry into UAE territory, the UAE almost immediately publicized the availability of the relevant telephone line.[17] As the UAE has shown the Court, the telephone line subsequently began to receive, and accept in great numbers, such applications.[18] To reaffirm: there has been and is no law or administrative order expelling all Qataris from Qatar, nor is there any policy in place to that effect.

Although the UAE maintains that there is no need for an announcement clarifying the entry and residence requirements applicable to Qatari nationals, the UAE is at present actively contemplating the issuing of such an announcement. This would clearly confirm the UAE's position in its pleadings and may help to eliminate the confusion created in the public by Qatar's filing of this case and the allegations contained in its pleadings.

[16] See Exhibits 11, 13 and 14 of the UAE's submission to the Court (dated 25 June 2018).
[17] See Exhibit 2 of the UAE's submission to the Court (dated 25 June 2018).
[18] See Exhibit 3 of the UAE's submission to the Court (dated 25 June 2018); see also CR 2018/13 (28 June 2018) at pgs. 34 (Treves) and 66 (Shaw).