INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

APPLICATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

(QATAR *v.* UNITED ARAB EMIRATES)

REQUEST FOR THE INDICATION
OF PROVISIONAL MEASURES

ORDER OF 23 JULY 2018

2018

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

APPLICATION DE LA CONVENTION INTERNATIONALE SUR L'ÉLIMINATION DE TOUTES LES FORMES DE DISCRIMINATION RACIALE

(QATAR c. ÉMIRATS ARABES UNIS)

DEMANDE EN INDICATION
DE MESURES CONSERVATOIRES

ORDONNANCE DU 23 JUILLET 2018

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ORDONNANCE

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INTERNATIONAL COURT OF JUSTICE
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23 July 2018

APPLICATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

(QATAR *v.* UNITED ARAB EMIRATES)

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

ORDER

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.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court,

Makes the following Order:

Whereas:

1. On 11 June 2018, the State of Qatar (hereinafter referred to as "Qatar") filed in the Registry of the Court an Application instituting proceedings against the United Arab Emirates (hereinafter referred to as the "UAE") with regard to alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (hereinafter "CERD" or the "Convention").

2. At the end of its Application, Qatar

"in its own right and as *parens patriae* of its citizens, respectfully requests the Court to adjudge and declare that the UAE, through its State organs, State agents, and other persons and entities exercising governmental authority, and through other agents acting on its instructions or under its direction and control, has violated its obligations under Articles 2, 4, 5, 6, and 7 of the CERD by taking, *inter alia*, the following unlawful actions:

a. Expelling, on a collective basis, all Qataris from, and prohibiting the entry of all Qataris into, the UAE on the basis of their national origin;
b. Violating other fundamental rights, including the rights to marriage and choice of spouse, freedom of opinion and expression, public health and medical care, education and training, property, work, participation in cultural activities, and equal treatment before tribunals;

c. Failing to condemn and instead encouraging racial hatred against Qatar and Qataris and failing to take measures that aim to combat prejudices, including by *inter alia*: criminalizing the expression of sympathy toward Qatar and Qataris; allowing, promoting, and financing an international anti-Qatar public and social media campaign; silencing Qatari media; and calling for physical attacks on Qatari entities; and

d. Failing to provide effective protection and remedies to Qataris to seek redress against acts of racial discrimination through UAE courts and institutions."

Accordingly,

"Qatar respectfully requests the Court to order the UAE to take all steps necessary to comply with its obligations under CERD and, *inter alia*:

a. Immediately cease and revoke the Discriminatory Measures, including but not limited to the directives against 'sympathizing' with Qataris, and any other national laws that discriminate *de jure* or *de facto* against Qataris on the basis of their national origin;
b. Immediately cease all other measures that incite discrimination (including media campaigns and supporting others to propagate discriminatory messages) and criminalize such measures;

c. Comply with its obligations under the CERD to condemn publicly racial discrimination against Qataris, pursue a policy of eliminating racial discrimination, and adopt measures to combat such prejudice;

d. Refrain from taking any further measures that would discriminate against Qataris within its jurisdiction or control;

e. Restore rights of Qataris to, *inter alia*, marriage and choice of spouse, freedom of opinion and expression, public health and medical care, education and training, property, work, participation in cultural activities, and equal treatment before tribunals, and put in place measures to ensure those rights are respected;

f. Provide assurances and guarantees of non-repetition of the UAE's illegal conduct; and

g. Make full reparation, including compensation, for the harm suffered as a result of the UAE's actions in violation of the CERD."

3. In its Application, Qatar seeks to found the Court's jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article 22 of CERD.

4. On 11 June 2018, Qatar also submitted a Request for the indication of provisional measures, referring to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court.

5. At the end of its Request for the indication of provisional measures, Qatar asked the Court to indicate the following provisional measures:

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

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

ii. taking all necessary steps to ensure that Qataris (or persons with links to Qatar) are not subjected to racial hatred or discrimination, including by condemning hate speech targeting Qataris, ceasing publication of anti-Qatar statements

and caricatures, and refraining from any other incitement to racial discrimination against Qataris;

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

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

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

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

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

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

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

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

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

6. The Registrar immediately communicated to the Government of the UAE the Application, in accordance with Article 40, paragraph 2, of the Statute of the Court, and the Request for the indication of provisional measures, in accordance with Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of the filing of the Application and the Request by Qatar.

7. Pending the notification provided for by Article 40, paragraph 3, of the Statute by transmission of the printed bilingual text of the Application to the Members of the United Nations through the Secretary-General, the Registrar informed those States of the filing of the Application and the Request.

8. Since the Court included upon the Bench no judge of the nationality of either Party, each Party proceeded to exercise the right conferred upon it by Article 31 of the Statute to choose a judge *ad hoc* to sit in the case. Qatar chose Mr. Yves Daudet and the UAE Mr. Jean-Pierre Cot.

9. By letters dated 14 June 2018, the Registrar informed the Parties that, pursuant to Article 74, paragraph 3, of its Rules, the Court had fixed 27, 28 and 29 June 2018 as the dates for the oral proceedings on the Request for the indication of provisional measures.

10. At the public hearings, oral observations on the Request for the indication of provisional measures were presented by:

On behalf of Qatar: Mr. Mohammed Abdulaziz Al-Khulaifi,
Mr. Donald Francis Donovan,
Ms Catherine Amirfar,
Mr. Pierre Klein,
Lord Peter Goldsmith,
Mr. Lawrence H. Martin.

On behalf of the UAE: H.E. Mr. Saeed Ali Yousef Alnowais,
Mr. Alain Pellet,
Mr. Tullio Treves,
Mr. Simon Olleson,
Mr. Malcolm Shaw,
Mr. Charles L. O. Buderi.

11. At the end of its second round of oral observations, Qatar asked the Court to indicate the following provisional measures:

"a) The UAE shall cease and desist from any and all conduct that could result, directly or indirectly, in any form of racial discrimination against Qatari individuals and entities by any organs, agents, persons, and entities exercising UAE governmental authority in its territory, or under its direction or control. In par-

ticular, the UAE shall immediately cease and desist from violations of the human rights of Qataris under the CERD, including by:

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

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

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

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

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

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

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

viii. ceasing and desisting from measures that, directly or indirectly, prevent Qataris from accessing, enjoying, utilizing, or managing their property in the UAE, and taking all necessary steps to ensure that Qataris may authorize valid powers

of attorney in the UAE, renew necessary business and worker licenses, and renew their leases; and

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

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

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

12. At the end of its second round of oral observations, the UAE requested the Court "to reject the request for the indication of provisional measures submitted by the State of Qatar".

13. At the hearings, Members of the Court put questions to the Parties, to which replies were given in writing, in accordance with Article 61, paragraph 4, of the Rules of Court. Under Article 72 of the Rules of Court, each Party presented written comments on the written replies received from the other.

* * *

I. Prima Facie Jurisdiction

1. General Introduction

14. The Court may indicate provisional measures only if the provisions relied on by the Applicant appear, prima facie, to afford a basis on which its jurisdiction could be founded, but need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case (see, for example, *Jadhav (India* v. *Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, p. 236, para. 15).

15. In the present case, Qatar seeks to found the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article 22 of CERD (see paragraph 3 above). The Court must therefore first determine whether those provisions prima facie confer upon it jurisdiction to rule on the merits of the case, enabling it — if the other necessary conditions are fulfilled — to indicate provisional measures.

16. Qatar and the UAE are parties to CERD. Qatar acceded to that instrument on 22 July 1976, without entering any reservation; the UAE did so on 20 June 1974, without entering a reservation to Article 22 or any other relevant reservation for the present purposes.

17. Article 22 of CERD provides that:

> "Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement."

2. Existence of a Dispute concerning the Interpretation or Application of CERD

18. Article 22 of CERD makes the Court's jurisdiction conditional on the existence of a dispute arising out of the interpretation or application of CERD. A dispute between States exists where they hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations (see *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, citing *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74). The claim of one party must be "positively opposed" by the other (*South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328). In order to determine whether a dispute exists, the Court "cannot limit itself to noting that one of the Parties maintains that the Convention applies, while the other denies it" (*Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1159, para. 47). Since Qatar has invoked as a basis of the Court's jurisdiction the compromissory clause in an international convention, the Court must ascertain whether "the acts complained of by [the Applicant] are prima facie capable of falling within the provisions of that instrument and . . . [whether,] as a consequence, the dispute is one which the Court has jurisdiction *ratione materiae* to entertain" *(ibid.)*.

* *

19. Qatar contends that a dispute exists between the Parties concerning the interpretation and application of CERD. It asserts that, beginning on

5 June 2017, the UAE took discriminatory measures against Qataris and their families in violation of the provisions and principles underlying CERD. More specifically, Qatar states that, on 5 June 2017, the UAE "expelled all Qataris within its territory, giving them only 14 days to leave" and that it continues to prohibit Qataris from entering the UAE. Qatar observes that such measures do not apply to other non-citizens residing in the UAE. It therefore contends that the Respondent has targeted Qataris on the basis of their national origin, in violation of Article 1, paragraph 1, of CERD. Relying, *inter alia*, on General Recommendation XXX of the CERD Committee, Qatar argues that the Convention applies to discriminatory conduct based on Qatari national origin or nationality.

20. According to Qatar, because of the measures taken by the UAE, "[t]housands of Qataris are unable to return to the UAE, are separated from their families there, and are losing their homes, their jobs, their property, access to medical care, and the opportunity to pursue their education". It adds that there is no opportunity for Qataris to seek justice for these violations. The Applicant thus submits that the UAE is interfering with Qataris' basic human rights under Articles 2 and 5 of CERD. More specifically, it contends that the Respondent is violating — vis-à-vis Qataris — their right to marriage and choice of spouse; their right to freedom of opinion and expression; their right to public health and medical care; their right to education and training; their right to property; their right to work and their right to equal treatment before tribunals.

21. Qatar also maintains that the UAE has violated its obligations under Articles 4 and 7 of CERD "by failing to condemn racial hatred and prejudice and by inciting such hatred and prejudice against Qatar and Qataris". It further asserts that the UAE has failed to provide Qataris within its jurisdiction with effective protection and remedies against acts of racial discrimination, in violation of Article 6 of CERD.

*

22. The UAE contends that there is no dispute between the Parties concerning the interpretation or application of CERD. It states that there has been no mass expulsion of Qataris from the UAE, that all Qataris in the UAE continue to enjoy the full rights granted by law to all residents of or visitors to the country and that Qataris live with their families, attend school, and have access to health care as well as government services. The UAE explains that the measures it adopted in June 2017 were

"to impose additional requirements on the entry or re-entry into [its] territory by Qatari nationals".

23. The UAE further contends that no Qatari citizens have been prevented from seeking legal remedies for any matter and that there has been no interference in the business affairs of Qatari nationals. The UAE maintains that it has not engaged in any media campaign against Qataris based on their nationality. Moreover, according to the UAE, there is no dispute falling within the scope of CERD as regards any alleged interference with freedom of expression.

24. In addition, the UAE asserts that, "even taking the factual allegations made by Qatar at face value", those allegations do not concern prohibited "racial" discrimination as defined in the Convention or other prohibited measures falling within the scope of the Convention. The UAE considers that the term "national origin" in Article 1, paragraph 1, of CERD is "twinned with" "ethnic origin" and that "national origin" is not to be read as encompassing "present nationality". It explains that such an interpretation flows from the ordinary meaning of that provision, when read in its context and in light of the object and purpose of the Convention. The UAE also considers that its interpretation is confirmed by the *travaux préparatoires*. It thus argues that Qatar's claims relating to alleged differences of treatment of Qatari nationals based solely on their present nationality fall outside the scope *ratione materiae* of CERD.

* *

25. The Court considers that, as evidenced by the arguments advanced and the documents placed before it, the Parties differ on the nature and scope of the measures taken by the UAE beginning on 5 June 2017 as well as on the question whether they relate to rights and obligations under CERD. Paragraph 2 of the statement made by the UAE on 5 June 2017 envisages the following measures:

> "Preventing Qatari nationals from entering the UAE or crossing its points of entry, giving Qatari residents and visitors in the UAE 14 days to leave the country for precautionary security reasons. The UAE nationals are likewise banned from traveling to or staying in Qatar or transiting through its territories."

26. The Court notes that Qatar contends that the measures adopted by the UAE purposely targeted Qataris based on their national origin. Consequently, according to Qatar, the UAE has failed to respect its obligations under Articles 2, 4, 5, 6 and 7 of CERD. The Court observes that Qatar maintains in particular that, because of the measures taken on 5 June 2017, UAE-Qatari mixed families have been separated, medical

care has been suspended for Qataris in the UAE, depriving those who were under medical treatment from receiving further medical assistance, Qatari students have been deprived of the opportunity to complete their education in the UAE and to continue their studies elsewhere since UAE universities have refused to provide them with their educational records, and Qataris have not been granted equal treatment before tribunals and other judicial organs in the UAE. For its part, the UAE firmly denies that it has committed any of the violations set out above.

27. In the Court's view, the acts referred to by Qatar, in particular the statement of 5 June 2017 — which allegedly targeted Qataris on the basis of their national origin — whereby the UAE announced that Qataris were to leave its territory within 14 days and that they would be prevented from entry, and the alleged restrictions that ensued, including upon their right to marriage and choice of spouse, to education as well as to medical care and to equal treatment before tribunals, are capable of falling within the scope of CERD *ratione materiae*. The Court considers that, while the Parties differ on the question whether the expression "national . . . origin" mentioned in Article 1, paragraph 1, of CERD encompasses discrimination based on the "present nationality" of the individual, the Court need not decide at this stage of the proceedings, in view of what is stated above, which of these diverging interpretations of the Convention is the correct one.

28. The Court finds that the above-mentioned elements are sufficient at this stage to establish the existence of a dispute between the Parties concerning the interpretation or application of CERD.

3. Procedural Preconditions

29. The Court recalls that it has previously indicated that the terms of Article 22 of CERD establish procedural preconditions to be met before the seisin of the Court (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 128, para. 141). Under Article 22 of CERD, the dispute referred to the Court must be a dispute "not settled by negotiation or by the procedures expressly provided for in this Convention". In addition, Article 22 states that the dispute may be referred to the Court at the request of any of the parties to the dispute only if the parties have not agreed to another mode of settlement. The Court notes that neither Party contends that they have agreed to another mode of settlement.

* *

30. Concerning the first precondition under Article 22, Qatar asserts that it made "genuine attempts to negotiate with the UAE in order to bring an end to the dispute and to the human rights violations that continue to impose suffering on its people". It adds that it has repeatedly raised questions of specific human rights violations resulting from unlawful acts of discrimination by the UAE against Qataris, since June 2017. More specifically, the Applicant refers to declarations made by high-ranking State officials, in particular an address made on 25 February 2018 to the United Nations Human Rights Council by Qatar's Minister for Foreign Affairs. Qatar asserts moreover that its Minister of State for Foreign Affairs, by a letter dated 25 April 2018, expressly referred to violations of specific provisions of CERD through the UAE's actions of 5 June 2017, and called on the UAE "to enter into negotiations in order to resolve these violations and the effects thereof". The Applicant indicates that, although the invitation asked for a reply within two weeks, the UAE never responded. The Applicant therefore considers that the UAE has either rebuffed or ignored Qatar's efforts to negotiate a peaceful resolution to the dispute and that the Parties have not consequently been able to settle their dispute, despite genuine attempts by Qatar to negotiate.

31. With regard to the second precondition included in Article 22 of CERD, namely the use of the procedures expressly provided for in the Convention, Qatar states that it deposited, on 8 March 2018, a communication with the CERD Committee under Article 11 of the Convention. It argues, however, that initiation or completion of that procedure is not a precondition to the Court's exercise of jurisdiction in the present case. It also points out that it does not rely on this communication for the purposes of showing prima facie jurisdiction.

32. The Applicant finally expresses the view that, in any event, the question whether the two preconditions included in Article 22 of CERD have a cumulative and successive character should not be decided by the Court at this stage.

*

33. In response to Qatar's arguments concerning the fulfilment of the preconditions included in Article 22 of CERD, the UAE first of all contends that they are cumulative and must be fulfilled successively before the seisin of the Court.

34. As far as the fulfilment of the first precondition is concerned, the UAE argues that, despite its allegations, Qatar has never made a "genuine attempt to negotiate" regarding the application of CERD. According to the UAE, the statements relied on by Qatar only relate very broadly to routine allegations of human rights violations and when, in passing, these

documents mention CERD, the reference is not accompanied by any form of proposal to negotiate. It adds that none of these statements can be considered as an offer to negotiate with a view to settling the dispute alleged by Qatar under Article 22 of CERD. With regard to Qatar's letter dated 25 April 2018, which was received, according to the Respondent, on 1 May 2018, the UAE states that this document once again concerns alleged human rights violations in general, and makes no mention of Article 22 of CERD. The UAE asserts that this alleged offer took the form of an "ultimatum", and underlines that it was sent almost a year after the Ministry of Foreign Affairs of the UAE made a statement asking Qataris to leave the country within 14 days. The UAE explains that it neither accepted nor refused Qatar's alleged invitation. It affirms that it was informed only on 7 May 2018 that Qatar had addressed a communication to the CERD Committee. It also points out that Qatar submitted to the Court, on 11 June 2018, its Application instituting the proceedings in the present case and at the same time requested provisional measures without waiting for the outcome of the procedure before the CERD Committee. The UAE therefore concludes that, while it is true that the alleged dispute has not been settled by negotiation, "there has been no 'genuine attempt' to do so".

35. Regarding the second precondition included in Article 22 of CERD, namely the use of the procedures expressly provided for in the Convention, the UAE submits that Qatar must exhaust the procedure in the CERD Committee before seising the Court. In the alternative, the Respondent considers that the way in which Qatar has proceeded is incompatible with both the *electa una via* principle and the *lis pendens* exception, as the same claim has been submitted to two different bodies by the same applicant against the same respondent.

* *

36. Regarding the first precondition, namely the negotiations to which the compromissory clause refers, the Court observes that negotiations are distinct from mere protests or disputations and require a genuine attempt by one of the parties to engage in discussions with the other party, with a view to resolving the dispute. Where negotiations are attempted or have commenced, the precondition of negotiation is only met when the attempt to negotiate has been unsuccessful or where negotiations have failed, or become futile or deadlocked. In order to meet the precondition of negotiation contained in the compromissory clause of a treaty, "the subject-matter of the negotiations must relate to the subject-matter of the dispute which, in turn, must concern the substantive obligations contained in the treaty in question" (see *Application of the International*

Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. *Russian Federation), Preliminary Objections, Judgment, I.C.J Reports 2011 (I)*, p. 133, para. 161). At this stage of the proceedings, the Court first has to assess whether it appears that Qatar genuinely attempted to engage in negotiations with the UAE, with a view to resolving their dispute concerning the latter's compliance with its substantive obligations under CERD, and whether it appears that Qatar pursued these negotiations as far as possible.

37. The Court notes that it has not been challenged by the Parties that issues relating to the measures taken by the UAE in June 2017 have been raised by representatives of Qatar on several occasions in international fora, including at the United Nations, in the presence of representatives of the UAE. For example, during the thirty-seventh session of the United Nations Human Rights Council in February 2018, the Minister for Foreign Affairs of Qatar referred to "the violations of human rights caused by the unjust blockade and the unilateral coercive measures imposed on [his] country that have been confirmed by the . . . report of the Office of the United Nations High Commissioner for Human Rights Technical Mission", while the UAE — along with Bahrain, Saudi Arabia and Egypt — issued a joint statement "in response to [the] remarks" made by the Minister for Foreign Affairs of Qatar.

38. The Court further notes that, in a letter dated 25 April 2018 and addressed to the Minister of State for Foreign Affairs of the UAE, the Minister of State for Foreign Affairs of Qatar referred to the alleged violations of CERD arising from the measures taken by the UAE beginning on 5 June 2017 and stated that "it [was] necessary to enter into negotiations in order to resolve these violations and the effects thereof within no more than two weeks". The Court considers that the letter contained an offer by Qatar to negotiate with the UAE with regard to the latter's compliance with its substantive obligations under CERD. In the light of the foregoing, and given the fact that the UAE did not respond to that formal invitation to negotiate, the Court is of the view that the issues raised in the present case had not been resolved by negotiations at the time of the filing of the Application.

39. The Court now turns to the second precondition contained in Article 22 of CERD, relating to "the procedures expressly provided for in the Convention". It is recalled that, according to Article 11 of the Convention, "[i]f a State Party considers that another State Party is not giving effect to the provisions of this Convention", the matter may be brought to the attention of the CERD Committee. The Court notes that Qatar deposited, on 8 March 2018, a communication with the CERD Committee under Article 11 of the Convention. It observes, however, that Qatar does not rely on this communication for the purposes of showing prima facie jurisdiction in the present case. Although the Parties disagree as to

whether negotiations and recourse to the procedures referred to in Article 22 of CERD constitute alternative or cumulative preconditions to be fulfilled before the seisin of the Court, the Court is of the view that it need not make a pronouncement on the issue at this stage of the proceedings (see *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, pp. 125-126, para. 60). Nor does it consider it necessary, for the present purposes, to decide whether any *electa una via* principle or *lis pendens* exception are applicable in the present situation.

40. The Court thus finds, in view of all the foregoing, that the procedural preconditions under Article 22 of CERD for its seisin appear, at this stage, to have been complied with.

4. Conclusion as to Prima Facie Jurisdiction

41. In light of the foregoing, the Court concludes that, prima facie, it has jurisdiction pursuant to Article 22 of CERD to deal with the case to the extent that the dispute between the Parties relates to the "interpretation or application" of the said Convention.

* * *

42. The Court notes that the UAE has contended that Qatar had to prove that its citizens had exhausted local remedies before it seised the Court and that Qatar has denied that the exhaustion of local remedies is a precondition for the seisin of the Court in the present case. The Court observes that, in the current proceedings, Qatar asserts its rights on the basis of alleged violations of CERD by the UAE. The Court further notes that the UAE did not indicate any effective local remedies that were available to the Qataris that have not been exhausted. The Court is of the view that, at this stage of the proceedings relating to a request for the indication of provisional measures, the issue of exhaustion of local remedies need not be addressed by the Court.

II. The Rights Whose Protection Is Sought and the Measures Requested

43. The power of the Court to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights of the parties in a case, pending its decision on the merits thereof.

It follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong to either party. 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 (see, for example, *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. 126, para. 63).

44. At this stage of the proceedings, the Court, however, is not called upon to determine definitively whether the rights which Qatar wishes to see protected exist; it need only decide whether the rights claimed by Qatar on the merits, and for which it is seeking protection, are plausible. Moreover, a link must exist between the rights whose protection is sought and the provisional measures being requested (*ibid.*, para. 64).

* *

45. In its Application, Qatar asserts rights under Articles 2, 4, 5, 6 and 7 of CERD. In its Request for the indication of provisional measures, in order to identify the rights which it seeks to protect pending a decision on the merits, Qatar refers to Articles 2, 4, 5 and 6 of the Convention and, in the course of the oral proceedings on its Request, it also referred to Article 7 of the Convention. In those hearings, Qatar asserted that the UAE was violating the Convention's prohibition on collective expulsion, interfering with Qataris' basic human rights under Articles 2 and 5, inciting and failing to condemn racial hatred and prejudice under Articles 4 and 7, and denying effective protection and remedies against acts of racial discrimination under Article 6.

46. Qatar states that the alleged rights are plausible in so far as they are "grounded in a possible interpretation" of the treaty invoked. For Qatar, the definition of racial discrimination under Article 1, paragraph 1, of the Convention "is a question of plausibility of the rights asserted". Qatar submits that "the measures imposed by the UAE on 5 June 2017 and thereafter make clear their purpose: racial discrimination based on national origin". In the second round of oral observations, Qatar added that "the Convention cannot be read to exclude discriminatory conduct based on Qatari national origin or nationality". Qatar argues that its "claims that the UAE is singling out Qataris and only Qataris en masse for discriminatory treatment raise plausible rights supporting an indication of provisional measures".

47. With regard to evidence adduced to demonstrate the plausibility of the rights it claims, Qatar refers in particular to the December 2017 report of the Technical Mission despatched by the Office of the United Nations High Commissioner for Human Rights (hereinafter "OHCHR") which concluded that the measures put in place by the UAE had "a potentially durable effect on the enjoyment of the human rights and fundamental freedoms of those affected". Qatar argues, in conclusion, that the rights it claims clearly fulfil the condition of plausibility.

*

48. The UAE, for its part, contends that in making its claim, and in attempting to provide a basis for the measures requested, Qatar seeks to give an unacceptably broad interpretation to a number of the obligations enumerated in Article 5 of the Convention, and that, as a consequence, the rights on which it seeks to rely are not plausible. It submits that the definition of "racial discrimination" in Article 1, paragraph 1, of CERD does not apply to differences of treatment on the basis of "present nationality" (see paragraph 24 above).

49. The UAE also argues that the lack of evidence supporting Qatar's claims calls into question the plausibility of the rights asserted by Qatar. In particular, it maintains that the report of the Technical Mission of the OHCHR relates to events which occurred over seven months earlier and that its relevance to the circumstances prevailing at this moment is highly questionable.

* *

50. The Court notes that CERD imposes a number of obligations on States parties with regard to the elimination of racial discrimination in all its forms and manifestations. Article 1 of CERD defines racial discrimination in the following terms:

> "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

Articles 2, 4, 5, 6 and 7 of the Convention, invoked by Qatar, read as follows:

> "*Article 2*
>
> 1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of elim-

inating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

. . . . . .

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia*:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial

discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(c) Political rights, in particular the right to participate in elections — to vote and to stand for election — on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;

(ii) The right to leave any country, including one's own, and to return to one's country;

(iii) The right to nationality;

(iv) The right to marriage and choice of spouse;

(v) The right to own property alone as well as in association with others;

(vi) The right to inherit;

(vii) The right to freedom of thought, conscience and religion;

(viii) The right to freedom of opinion and expression;

(ix) The right to freedom of peaceful assembly and association;

(e) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against

unemployment, to equal pay for equal work, to just and favourable remuneration;
(ii) The right to form and join trade unions;
(iii) The right to housing;
(iv) The right to public health, medical care, social security and social services;
(v) The right to education and training;
(vi) The right to equal participation in cultural activities;

(f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks.

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention."

51. The Court recalls, as it did in past cases in which CERD was at issue, that there is a correlation between respect for individual rights, the obligations of States parties under CERD and the right of States parties to seek compliance therewith (see *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. 135, para. 81).

52. The Court notes that Articles 2, 4, 5, 6 and 7 of CERD are intended to protect individuals from racial discrimination. Consequently, in the context of a request for the indication of provisional measures, a State party to CERD may avail itself of the rights under the above-mentioned articles only if the acts complained of appear to constitute acts of racial discrimination as defined in Article 1 of the Convention.

53. In this regard, the Court recalls its conclusion that it need not decide at this stage of the proceedings between the divergent views of the Parties on whether the expression "national . . . origin" in Article 1, paragraph 1, of CERD encompasses discrimination based on "present nationality" (see paragraph 27 above).

54. In the present case, the Court notes, on the basis of the evidence presented to it by the Parties, that the measures adopted by the UAE on 5 June 2017 appear to have targeted only Qataris and not other non-citizens residing in the UAE. Furthermore, the measures were directed to all Qataris residing in the UAE, regardless of individual circumstances. Therefore, it appears that some of the acts of which Qatar complains may constitute acts of racial discrimination as defined by the Convention. Consequently, the Court finds that at least some of the rights asserted by Qatar under Article 5 of CERD are plausible. This is the case, for example, with respect to the alleged racial discrimination in the enjoyment of rights such as the right to marriage and to choice of spouse, the right to education, as well as freedom of movement, and access to justice.

* *

55. The Court now turns to the issue of the link between the rights claimed and the provisional measures requested.

* *

56. Qatar contends that there is clearly a link between all the measures requested and the various rights arising out of CERD whose protection it seeks, including the general prohibition of racial discrimination, the prohibition of hate speech, and the enjoyment of civil and political rights, as well as economic, social and cultural rights referred to in Article 5 of the Convention.

*

57. The UAE, for its part, contends that the requisite link between the rights relied upon and the measures sought is not present. In particular, it argues that the principal aim of the provisional measures being requested is the overturning of the alleged limitations on the entry of Qatari nationals to the UAE; however, according to the UAE, the measures sought are as such insufficiently linked to the rights which Qatar asserts are at issue.

* *

58. The Court has already found (see paragraph 54 above) that at least some of the rights asserted by Qatar under Article 5 of CERD are plausible. It recalls that Article 5 prohibits discrimination in the enjoyment of a variety of civil and political rights and economic, social and cultural rights. The Court considers that the measures requested by Qatar (see paragraph 11 above) are aimed not only at ending any collective expulsion of Qataris from the territory of the UAE, but also at protecting other specific rights contained in Article 5.

59. The Court concludes, therefore, that a link exists between the rights whose protection is being sought and the provisional measures being requested by Qatar.

III. Risk of Irreparable Prejudice and Urgency

60. The Court, pursuant to Article 41 of its Statute, has the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of judicial proceedings (see, for example, *Jadhav (India* v. *Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, p. 243, para. 49; *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. 136, para. 88).

61. However, 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 (*Jadhav (India* v. *Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, p. 243, para. 50; *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. 136, para. 89). The condition of urgency is met when the acts susceptible of causing irreparable prejudice can "occur at any moment" before the Court rules on the merits (*Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1169, para. 90). The Court must therefore consider whether such a risk exists at this stage of the proceedings.

62. The Court is not called upon, for the purposes of its decision on the Request for the indication of provisional measures, to establish the existence of breaches of CERD, but to determine whether the circumstances require the indication of provisional measures for the protection of rights under this instrument. It cannot at this stage make definitive findings of fact, and the right of each Party to submit arguments in respect

of the merits remains unaffected by the Court's decision on the Request for the indication of provisional measures.

* *

63. Qatar submits that irreparable prejudice is the natural consequence of violations of the rights before the Court in this case and that no decision of the Court on the merits — whenever it is rendered — could "wipe out" all of this damage and "restore" the *status quo ante*. Qatar is of the view that, in the present case, the Court does not need to determine whether there is a risk of irreparable prejudice to those rights, since the evidence shows that this type of prejudice exists today and continues to be manifest, as a result of the UAE's refusal to comply with CERD. Qatar thus emphasizes the continuous nature of the violations of the fundamental rights alleged, namely the rights to movement and residence, family reunification, education, work, freedom of opinion and expression, health, freedom of religious practice, private property and the right to access courts in the UAE to protect Qatari property and assets or to challenge any discriminatory measures. Qatar stresses that the "durable consequences" of the continuous violation of the right to movement and residence on the right to work and to access property, as well as on the right to family reunification, was acknowledged in the report of the Technical Mission despatched by the OHCHR and, therefore, "cannot be questioned". Citing a report of Amnesty International dated 5 June 2018, Qatar asserts that, a year on, the situation has not improved and that residents of the region are still left facing uncertain futures. Qatar concludes that, since the damage is present and ongoing, the condition of imminence is also plainly fulfilled.

64. Qatar claims that the UAE has resisted all requests to terminate the discriminatory measures. It refers in particular to the issuance by the UAE of 13 demands on 23 June 2017, supplemented by six demands on 5 July 2017, requesting, *inter alia*, that Qatar align itself with the other Gulf and Arab countries militarily, politically, socially, and economically, as a precondition for the lifting of the discriminatory measures. Qatar submits that, in doing so, the UAE has aggravated the dispute. Qatar contends that, in light of the UAE's refusal to suspend or withdraw its illegal acts, the people of Qatar could see an indefinite violation of their rights and would suffer damage and distress as a result. Accordingly, it considers that provisional measures are "urgently required to compel the UAE to abide by its international obligations under the CERD".

*

65. The UAE denies that there exists a risk of irreparable prejudice to the rights of the Applicant under CERD. Challenging the reliance and independence of the evidence submitted to the Court by Qatar, it asserts that Qataris continue to enjoy the full rights granted by law to all residents of or visitors to the UAE. Although the UAE does not deny that it has severed relations with Qatar due to national security concerns, in particular its alleged support for terrorism and extremism, it asserts that the statement of 5 June 2017, whereby its Ministry of Foreign Affairs announced that Qataris were to leave the UAE within 14 days and that they would be prevented from entry, was carefully measured to have the least possible impact on the people of Qatar. The UAE asserts that there were in fact no legal steps taken by its Government to deport Qataris who remained after the 14-day period; restrictions were only imposed on Qataris wishing to enter the UAE, who were required to seek prior permission, which was almost always granted. The UAE adds that measures have been taken to deal with the problem of separation of families that include Qataris. Thus, a presidential directive, issued on 6 June 2017, instructed the authorities to take into account the humanitarian circumstances of UAE-Qatari mixed families, and a special telephone line was established to deal with such cases and to ensure that appropriate action was taken. The UAE argues that, even if the Court were to find that there is a risk of prejudice caused to the rights alleged by Qatar as a result of the actions of the UAE, the prejudice would not be irreparable.

66. The UAE further asserts that the situation is not urgent as alleged by Qatar. In addition to referring to the remedial measures already taken, as described in paragraph 65 above, it observes that the Request for provisional measures was filed by Qatar on 11 June 2018, i.e. more than a year after the Ministry of Foreign Affairs of the UAE made a statement asking Qatari nationals to leave the country within 14 days.

* *

67. The Court considers that certain rights in question in these proceedings — in particular, several of the rights stipulated in Article 5, paragraphs *(a)*, *(d)* and *(e)*, of CERD — are of such a nature that prejudice to them is capable of causing irreparable harm (see *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. 138, para. 96).

On the basis of the evidence presented to it by the Parties, the Court is of the opinion that the situation of Qataris residing in the UAE prior to 5 June 2017 appears to remain vulnerable with regard to their rights under Article 5 of the Convention.

68. In this regard, the Court observes that, following the statement of 5 June 2017, whereby the Ministry of Foreign Affairs of the UAE announced that Qataris were to leave the territory within 14 days and that they would be prevented from entry, many Qataris residing in the UAE at that time appeared to have been forced to leave their place of residence without the possibility of return. The Court notes that a number of consequences apparently resulted from this situation and that the impact on those affected seem to persist to this date: UAE-Qatari mixed families have been separated; Qatari students have been deprived of the opportunity to complete their education in the UAE and to continue their studies elsewhere since UAE universities have refused to provide them with their educational records; and Qataris have been denied equal access to tribunals and other judicial organs in the UAE.

69. As the Court has already observed, individuals forced to leave their own place of residence without the possibility of return could, depending on the circumstances, be subject to a serious risk of irreparable prejudice (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 396, para. 142). The Court is of the view that a prejudice can be considered as irreparable when individuals are subject to temporary or potentially ongoing separation from their families and suffer from psychological distress; when students are prevented from taking their exams due to enforced absence or from pursuing their studies due to a refusal by academic institutions to provide educational records; or when the persons concerned are impeded from being able to physically appear in any proceedings or to challenge any measure they find discriminatory.

70. The Court notes that the UAE stated, in response to a question posed by a Member of the Court at the end of the oral proceedings, that, following the statement of 5 June 2017 by its Ministry of Foreign Affairs, no administrative orders have been issued under the immigration law to expel Qataris. The Court nonetheless notes that it appears from the evidence before it that, as a result of this statement, Qataris felt obliged to leave the UAE resulting in the specific prejudices to their rights described above. Moreover, in view of the fact that the UAE has not taken any official steps to rescind the measures of 5 June 2017, the situation affecting the enjoyment of their above-mentioned rights in the UAE remains unchanged.

71. The Court thus finds that there is an imminent risk that the measures adopted by the UAE, as set out above, could lead to irreparable prejudice to the rights invoked by Qatar, as specified by the Court (see paragraph 54 above).

IV. Conclusion and Measures to Be Adopted

72. The Court concludes from all of the above considerations that the conditions required by its Statute for it to indicate provisional measures are met. It is therefore necessary, pending its final decision, for the Court to indicate certain measures in order to protect the rights claimed by Qatar, as identified above (see paragraph 54 above).

73. The Court recalls that it has the power, under its Statute, when a request for provisional measures has been made, to indicate measures that are, in whole or in part, other than those requested. Article 75, paragraph 2, of the Rules of Court specifically refers to this power of the Court. The Court has already exercised this power on several occasions in the past (see, for example, *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. 139, para. 100).

74. In the present case, having considered the terms of the provisional measures requested by Qatar and the circumstances of the case, the Court finds that the measures to be indicated need not be identical to those requested.

75. Reminding the UAE of its duty to comply with its obligations under CERD, the Court considers that, with regard to the situation described above, the UAE must, pending the final decision in the case and in accordance with its obligations under CERD, ensure that families that include a Qatari, separated by the measures adopted by the UAE on 5 June 2017, are reunited, that Qatari students affected by those measures are given the opportunity to complete their education in the UAE or to obtain their educational records if they wish to continue their studies elsewhere, and that Qataris affected by those measures are allowed access to tribunals and other judicial organs of the UAE.

76. The Court recalls that Qatar has requested it to indicate measures aimed at ensuring the non-aggravation of the dispute with the UAE. When it is indicating provisional measures for the purpose of preserving specific rights, the Court may also indicate provisional measures with a view to preventing the aggravation or extension of a dispute whenever it

considers that the circumstances so require (see *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. 139, para. 103). In this case, having considered all the circumstances, in addition to the specific measures it has decided to take, the Court deems it necessary to indicate an additional measure directed to both Parties and aimed at ensuring the non-aggravation of their dispute.

* * *

77. The Court reaffirms that its "orders on provisional measures under Article 41 [of the Statute] have binding effect" (*LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001*, p. 506, para. 109) and thus create international legal obligations for any party to whom the provisional measures are addressed.

* * *

78. The Court further reaffirms that the decision given in the present proceedings in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application or to the merits themselves. It leaves unaffected the right of the Governments of Qatar and the UAE to submit arguments in respect of those questions.

* * *

79. For these reasons,

THE COURT,

Indicates the following provisional measures:

(1) By eight votes to seven,

The United Arab Emirates must ensure that

(i) families that include a Qatari, separated by the measures adopted by the United Arab Emirates on 5 June 2017, are reunited;

(ii) Qatari students affected by the measures adopted by the United Arab Emirates on 5 June 2017 are given the opportunity to complete their education in the United Arab Emirates or to obtain their educational records if they wish to continue their studies elsewhere; and

(iii) Qataris affected by the measures adopted by the United Arab Emir-

ates on 5 June 2017 are allowed access to tribunals and other judicial organs of the United Arab Emirates;

IN FAVOUR: *President* Yusuf; *Vice-President* Xue; *Judges* Abraham, Bennouna, Cançado Trindade, Sebutinde, Robinson; *Judge* ad hoc Daudet;

AGAINST: *Judges* Tomka, Gaja, Bhandari, Crawford, Gevorgian, Salam; *Judge* ad hoc Cot;

(2) By eleven votes to four,

Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

IN FAVOUR: *President* Yusuf; *Vice-President* Xue; *Judges* Tomka, Abraham, Bennouna, Cançado Trindade, Gaja, Sebutinde, Bhandari, Robinson; *Judge* ad hoc Daudet;

AGAINST: *Judges* Crawford, Gevorgian, Salam; *Judge* ad hoc Cot.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-third day of July, two thousand and eighteen, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the State of Qatar and the Government of the United Arab Emirates, respectively.

(Signed) Abdulqawi Ahmed YUSUF,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judges TOMKA, GAJA and GEVORGIAN append a joint declaration to the Order of the Court; Judge CANÇADO TRINDADE appends a separate opinion to the Order of the Court; Judges BHANDARI, CRAWFORD and SALAM append dissenting opinions to the Order of the Court; Judge *ad hoc* COT appends a dissenting opinion to the Order of the Court.

(Initialled) A.A.Y.
(Initialled) Ph.C.