Corrigé
Corrected

CR 2020/7

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2020

Public sitting

held on Wednesday 2 September 2020, at 3 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 2020

Audience publique

tenue le mercredi 2 septembre 2020, à 15 heures, au Palais de la Paix,

sous la présidence de M. Yusuf, président,

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

COMPTE RENDU

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

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

M. Gautier, greffier

The Government of the State of Qatar is represented by:

Mr. Mohammed Abdulaziz Al-Khulaifi, Legal Adviser to H.E. the Deputy Prime Minister and Minister for Foreign Affairs of the State of Qatar, Dean of the College of Law, Qatar University,

as Agent;

Mr. Vaughan Lowe, QC, Emeritus Chichele Professor of Public International Law, University of Oxford, member of the Institut de droit international, member of the Bar of England and Wales, Essex Court Chambers,

Mr. Pierre Klein, Professor of International Law, Université libre de Bruxelles,

Ms Catherine Amirfar, Debevoise & Plimpton LLP, member of the Bar of the State of New York,

Mr. Lawrence H. Martin, Foley Hoag LLP, member of the Bars of the District of Columbia and the Commonwealth of Massachusetts,

Mr. Nico Schrijver, Professor of International Law, Leiden University, member of the Institut de droit international,

as Counsel and Advocates;

H.E. Mr. Abdullah bin Hussein Al-Jaber, Ambassador of the State of Qatar to the Kingdom of the Netherlands,

Mr. Ahmad Al-Mana, Ministry of Foreign Affairs,

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

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

Ms Hanadi Al-Shafei, Ministry of Foreign Affairs,

Ms Hessa Al-Dosari, Ministry of Foreign Affairs,

Ms Sara Al-Saadi, Ministry of Foreign Affairs,

Ms Amna Al-Nasser, Ministry of Foreign Affairs,

Mr. Ali Al-Hababi, Embassy of the State of Qatar in the Netherlands,

Mr. Rashed Al-Naemi, Embassy of the State of Qatar in the Netherlands,

Mr. Abdulla Al-Mulla, Ministry of Foreign Affairs,

as Advisers;

Mr. Pemmaraju Sreenivasa Rao, Special Adviser in the Office of the Attorney General, State of Qatar, former member of the International Law Commission, member of the Institut de droit international,

Le Gouvernement de l'Etat du Qatar est représenté par :

M. Mohammed Abdulaziz Al-Khulaifi, conseiller juridique auprès de S. Exc. le vice-premier ministre et ministre des affaires étrangères de l'Etat du Qatar, doyen de la faculté de droit de l'Université du Qatar,

comme agent ;

M. Vaughan Lowe, QC, professeur émérite de droit international (chaire Chichele) à l'Université d'Oxford, membre de l'Institut de droit international, membre du barreau d'Angleterre et du pays de Galles, cabinet Essex Court Chambers,

M. Pierre Klein, professeur de droit international à l'Université libre de Bruxelles,

Mme Catherine Amirfar, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York,

M. Lawrence H. Martin, cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et de l'Etat du Massachusetts,

M. Nico Schrijver, professeur de droit international à l'Université de Leyde, membre de l'Institut de droit international,

comme conseils et avocats ;

S. Exc. M. Abdullah bin Hussein Al-Jaber, ambassadeur de l'Etat du Qatar auprès du Royaume des Pays-Bas,

M. Ahmad Al-Mana, ministère des affaires étrangères,

M. Jassim Al-Kuwari, ministère des affaires étrangères,

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

Mme Hanadi Al-Shafei, ministère des affaires étrangères,

Mme Hessa Al-Dosari, ministère des affaires étrangères,

Mme Sara Al-Saadi, ministère des affaires étrangères,

Mme Amna Al-Nasser, ministère des affaires étrangères,

M. Ali Al-Hababi, ambassade de l'Etat du Qatar aux Pays-Bas,

M. Rashed Al-Naemi, ambassade de l'Etat du Qatar aux Pays-Bas,

M. Abdulla Al-Mulla, ministère des affaires étrangères,

comme conseillers ;

M. Pemmaraju Sreenivasa Rao, conseiller spécial auprès du bureau de l'*Attorney General* de l'Etat du Qatar, ancien membre de la Commission du droit international, membre de l'Institut de droit international,

Mr. Surya Subedi, QC (Hon.), Professor of International Law, University of Leeds, member of the Institut de droit international, Three Stone, member of the Bar of England and Wales,

Ms Loretta Malintoppi, 39 Essex Chambers Singapore, member of the Bar of Rome,

Mr. Pierre d'Argent, Professor of International Law, Université catholique de Louvain, member of the Institut de droit international, Foley Hoag LLP, member of the Bar of Brussels,

Mr. Constantinos Salonidis, Foley Hoag LLP, member of the Bars of the State of New York and Greece,

Ms Floriane Lavaud, Debevoise & Plimpton LLP, member of the Bars of the State of New York and Paris, Solicitor of the Senior Courts of England and Wales,

Mr. Ioannis Konstantinidis, Assistant Professor of International Law, College of Law, Qatar University,

Mr. Ali Abusedra, Legal Counsel, Ministry of Foreign Affairs of the State of Qatar,

Ms Merryl Lawry-White, Debevoise & Plimpton LLP, member of the Bar of the State of New York, Solicitor Advocate of the Senior Courts of England and Wales,

Ms Ashika Singh, Debevoise & Plimpton LLP, member of the Bar of the State of New York,

Ms Julianne Marley, Debevoise & Plimpton LLP, member of the Bar of the State of New York,

Ms Rhianna Hoover, Debevoise & Plimpton LLP, member of the Bar of the State of New York,

Mr. Joseph Klingler, Foley Hoag LLP, member of the Bars of the State of New York and the District of Columbia,

Mr. Peter Tzeng, Foley Hoag LLP, member of the Bars of the State of New York and the District of Columbia,

as Counsel;

Ms Mary-Grace McEvoy, Debevoise & Plimpton LLP,

Mr. Andrew Wharton, Debevoise & Plimpton LLP,

Mr. Jacob Waltner, Debevoise & Plimpton LLP,

as Assistants.

M. Surya Subedi, QC (Hon.), professeur de droit international à l'Université de Leeds, membre de l'Institut de droit international, cabinet Three Stone, membre du barreau d'Angleterre et du pays de Galles,

Mme Loretta Malintoppi, cabinet 39 Essex Chambers Singapore, membre du barreau de Rome,

M. Pierre d'Argent, professeur de droit international à l'Université catholique de Louvain, membre de l'Institut de droit international, cabinet Foley Hoag LLP, membre du barreau de Bruxelles,

M. Constantinos Salonidis, cabinet Foley Hoag LLP, membre des barreaux de l'Etat de New York et de Grèce,

Mme Floriane Lavaud, cabinet Debevoise & Plimpton LLP, membre des barreaux de l'Etat de New York et de Paris, *solicitor* près les juridictions supérieures d'Angleterre et du pays de Galles,

M. Ioannis Konstantinidis, professeur adjoint de droit international à la faculté de droit de l'Université du Qatar,

M. Ali Abusedra, conseiller juridique, ministère des affaires étrangères de l'Etat du Qatar,

Mme Merryl Lawry-White, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York, avocat et *solicitor* près les juridictions supérieures d'Angleterre et du pays de Galles,

Mme Ashika Singh, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York,

Mme Julianne Marley, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York,

Mme Rhianna Hoover, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York,

M. Joseph Klingler, cabinet Foley Hoag LLP, membre des barreaux de l'Etat de New York et du district de Columbia,

M. Peter Tzeng, cabinet Foley Hoag LLP, membre des barreaux de l'Etat de New York et du district de Columbia,

comme conseils ;

Mme Mary-Grace McEvoy, cabinet Debevoise & Plimpton LLP,

M. Andrew Wharton, cabinet Debevoise & Plimpton LLP,

M. Jacob Waltner, cabinet Debevoise & Plimpton LLP,

comme assistants.

The Government of the United Arab Emirates is represented by:

H.E. Ms Hissa Abdullah Ahmed Al-Otaiba, Ambassador of the United Arab Emirates to the Kingdom of the Netherlands,

as Agent;

H.E. Mr. Abdalla Hamdan AlNaqbi, Director of International Law Department, Ministry of Foreign Affairs and International Co-operation of the United Arab Emirates,

H.E. Ms Lubna Qassim Al Bastaki, Deputy Permanent Representative of the Permanent Mission of the United Arab Emirates to the United Nations Office and other international organizations in Geneva,

Mr. Scott Sheeran, Senior Legal Adviser to the Minister of State for Foreign Affairs, Ministry of Foreign Affairs and International Co-operation of the United Arab Emirates, Barrister and Solicitor of the High Court of New Zealand,

as Representatives and Advocates;

Sir Daniel Bethlehem, QC, Barrister, member of the Bar of England and Wales, Twenty Essex, London,

Mr. Mathias Forteau, Professor, University Paris Nanterre,

as Counsel and Advocates;

Mr. Abdulla Al Jasmi, Head of the Multilateral Treaties and Agreements Section, International Law Department, Ministry of Foreign Affairs and International Co-operation of the United Arab Emirates,

Mr. Mohamed Salim Ali Alowais, Head of the International Organizations and Courts Section, Embassy of the United Arab Emirates in the Kingdom of the Netherlands,

Ms Majd Abdelqadir Mohamed Abdalla, Senior Legal Researcher, Multilateral Treaties and Agreements Section, International Law Department, Ministry of Foreign Affairs and International Co-operation of the United Arab Emirates,

Mr. Rashed Jamal Ibrahim Ibrahim Azzam, Legal Researcher for International Relations, International Law Department, Ministry of Foreign Affairs and International Co-operation of the United Arab Emirates,

as Representatives;

Ms Caroline Balme, Legal Adviser to the Minister of State for Foreign Affairs, Ministry of Foreign Affairs and International Co-operation of the United Arab Emirates,

Mr. Paolo Busco, Legal Adviser to the Minister of State for Foreign Affairs, Ministry of Foreign Affairs and International Co-operation of the United Arab Emirates, member of the Italian Bar, registered European lawyer with the Bar of England and Wales,

Mr. Charles L. O. Buderi, Partner, Curtis, Mallet-Prevost, Colt & Mosle LLP, London, member of the Bars of the District of Columbia and the State of California,

Le Gouvernement des Emirats arabes unis est représenté par :

S. Exc. Mme Hissa Abdullah Ahmed Al-Otaiba, ambassadrice des Emirats arabes unis auprès du Royaume des Pays-Bas,

comme agente ;

S. Exc. M. Abdalla Hamdan AlNaqbi, directeur du département du droit international, ministère des affaires étrangères et de la coopération internationale des Emirats arabes unis,

S. Exc. Mme Lubna Qassim Al Bastaki, représentante permanente adjointe de la mission permanente des Emirats arabes unis auprès de l'Office des Nations Unies et des autres organisations internationales à Genève,

M. Scott Sheeran, conseiller juridique principal auprès du ministre d'Etat aux affaires étrangères, ministère des affaires étrangères et de la coopération internationale des Emirats arabes unis, *barrister* et *solicitor* près la High Court de Nouvelle-Zélande,

comme représentants et avocats ;

Sir Daniel Bethlehem, QC, *barrister*, membre du barreau d'Angleterre et du pays de Galles, cabinet Twenty Essex, Londres,

M. Mathias Forteau, professeur à l'Université Paris Nanterre,

comme conseils et avocats ;

M. Abdulla Al Jasmi, chef de la section des traités et accords multilatéraux, département du droit international, ministère des affaires étrangères et de la coopération internationale des Emirats arabes unis,

M. Mohamed Salim Ali Alowais, chef de la section des organisations et juridictions internationales, ambassade des Emirats arabes unis aux Pays-Bas,

Mme Majd Abdelqadir Mohamed Abdalla, chercheuse en droit principale, section des traités et accords multilatéraux, département du droit international, ministère des affaires étrangères et de la coopération internationale des Emirats arabes unis,

M. Rashed Jamal Ibrahim Ibrahim Azzam, chercheur en droit dans le domaine des relations internationales, département du droit international, ministère des affaires étrangères et de la coopération internationale des Emirats arabes unis,

comme représentants ;

Mme Caroline Balme, conseillère juridique auprès du ministre d'Etat aux affaires étrangères, ministère des affaires étrangères et de la coopération internationale des Emirats arabes unis,

M. Paolo Busco, conseiller juridique auprès du ministre d'Etat aux affaires étrangères, ministère des affaires étrangères et de la coopération internationale des Emirats arabes unis, membre du barreau d'Italie, inscrit en qualité de *registered European lawyer* au barreau d'Angleterre et du pays de Galles,

M. Charles L. O. Buderi, associé, cabinet Curtis, Mallet-Prevost, Colt & Mosle LLP, Londres, membre des barreaux du district de Columbia et de l'Etat de Californie,

Mr. Simon Olleson, Barrister, member of the Bar of England and Wales, Twenty Essex, London,

Ms Luciana T. Ricart, LLM, New York University School of Law, Partner, Curtis, Mallet-Prevost, Colt & Mosle LLP, London, member of the Buenos Aires Bar Association and Solicitor of the Senior Courts of England and Wales,

Mr. Hal Shapiro, Partner, Akin Gump Strauss Hauer & Feld LLP, Washington, DC,

as Counsel;

Ms Patricia Jimenez Kwast, international law and dispute settlement consultant, DPhil candidate, University of Oxford,

as Assistant Counsel.

M. Simon Olleson, *barrister*, membre du barreau d'Angleterre et du pays de Galles, cabinet Twenty Essex, Londres,

Mme Luciana T. Ricart, LLM, faculté de droit de l'Université de New York, associée, cabinet Curtis, Mallet-Prevost, Colt & Mosle LLP, Londres, membre du barreau de Buenos Aires et *solicitor* près les juridictions supérieures d'Angleterre et du pays de Galles,

M. Hal Shapiro, associé, cabinet Akin Gump Strauss Hauer & Feld LLP, Washington, DC,

comme conseils ;

Mme Patricia Jimenez Kwast, consultante en droit international et en règlement des différends, doctorante, Université d'Oxford,

comme conseil adjointe.

The PRESIDENT: The sitting is open. The Court meets this afternoon to hear the first round of oral argument of Qatar on the preliminary objections raised by the United Arab Emirates. I shall now give the floor to the Agent of Qatar, Mr. Mohammed Abdulaziz Al-Khulaifi. You have the floor, Sir.

Mr. AL-KHULAIFI:

I. INTRODUCTORY STATEMENT

1. Mr. President, honourable Members of the Court, it is a great privilege to appear before you as the Agent of the State of Qatar in these proceedings. Qatar deeply appreciates the extraordinary efforts taken by the Court to allow this hearing, which is of critical importance to Qatar and the Qatari people, to proceed despite the challenges imposed by the global pandemic.

2. When States from across the globe came together almost sixty years ago to negotiate the Convention on the Elimination of All Forms of Racial Discrimination, they had one overarching goal, as reflected in its preamble: to "speedily eliminat[e] racial discrimination throughout the world *in all its forms and manifestations*"[1].

3. When Qatar and the UAE agreed to the Convention, our respective countries committed to that goal. Today, Qatar stands before you for one reason only: to hold the UAE to that commitment. Since the UAE started targeting Qataris in June 2017, Qatar has pursued all legal and diplomatic options at its disposal to resolve the dispute and have the measures lifted, as would any responsible State when faced with such serious violations of its rights and the rights of its people. That is why, although we welcome the newly conciliatory tone of the UAE's speeches on Monday, we must continue to ask the Court to respectfully rule that the UAE's measures breached the Convention. Qatar's commitment to the rule of law and justice is unshakeable, and Qatar will stay steadfast, no matter the challenges it faces in the course of protecting the fundamental human dignity and rights of its people.

4. It has been over three years since this dispute began. As the Court will recall, on 5 June 2017, the UAE began imposing a series of unprecedented discriminatory measures that target

[1] MQ, Vol. III, Ann. 92: CERD, preamble, para. 5; emphasis added.

Qataris based on their national origin. We are gratified that the UAE now at least acknowledges that their actions "affected" Qataris[2]. In fact, the UAE's sudden imposition of these measures has fundamentally and negatively impacted the rights of Qataris. Historically, Qataris — alongside nationals of other countries in the Gulf Cooperation Council, or GCC — enjoyed a special relationship with the UAE in the form of a catalogue of rights including free movement, residency, and others granted to Qataris under the GCC framework. As a result, many Qataris led lives closely interwoven with those of Emiratis, and family, education, property, and other ties were deep — going back nearly four decades to the origin of the GCC and even beyond. As the UAE stated on Monday, "Emirati and Qatari '[f]amily ties often cut across national boundaries'"[3], and daily life, school, and work often spanned our respective countries.

5. The UAE has severed those close ties on 5 June 2017, literally overnight, when it singled out Qataris, and only Qataris, for discriminatory treatment.

6. The UAE's arguments on Monday and throughout these proceedings are founded upon a misleading, alternative narrative that conflicts sharply with the reality: a narrative in which Qataris have not been collectively expelled from or forbidden to enter the UAE, despite the wide publication of an official UAE government directive doing just that. A narrative in which the highly arbitrary and restrictive bans on Qatari travel are nothing more than "a visa system"[4]. A narrative in which the UAE's organized and well-documented campaign of anti-Qatari incitement does not exist, just because the UAE says so[5].

7. Mr. President, distinguished Members of the Court, to put it mildly, the UAE's measures are unprecedented and wholly unjustified in terms of the obligations the UAE owes to Qatar under the Convention, and have resulted in the nullification and impairment of the basic human rights of Qataris in the terms of Article 1, paragraph 1[6].

8. Even worse is that this negative impact was achieved very much by the UAE's purposeful design. The UAE declared to the world on 5 June 2017 that it took action because of what it

---

[2] CR 2020/6, pp. 18-19, para. 10 (AlNaqbi).

[3] CR 2020/6, p. 41, para. 13 (Sheeran).

[4] CR 2020/6, p. 23, para. 11 (Al Bastaki).

[5] POUAE, pp. 104-105, para. 205.

[6] MQ, Vol. III, Ann. 92: CERD, Article 1 (1).

perceived to be the alleged failure of Qatar to "honour international commitments and agreements"[7]. On this point, the UAE has been plain, announcing in its submissions before the Court that it took these actions against individual Qataris because the conduct of the State of Qatar, in the words of its counsel, "could not remain without consequences"[8].

9. Since the beginning of the crisis, the UAE has made the price for ending the discriminatory treatment of Qataris very clear: the State of Qatar must agree to a series of political demands in the form of the so-called "thirteen demands" and six "general principles"[9]. This was confirmed on Monday, when the UAE stated that Qatar must address the UAE's "national security concerns" in order for the measures to be lifted[10]. These "demands" and "principles" simply cannot be reconciled with the very foundation on which the international legal order rests, that is, the sovereign equality of States. It is a basic axiom of the international rule of law that States must refrain from intervention in the internal and external affairs of other States[11]. The UAE nevertheless demanded that Qatar shut down Al Jazeera and other media networks, cease diplomatic and military relations with certain other States, and submit to a periodic audit for up to ten years to monitor Qatar's compliance with the demands. The UAE's demands were and remain unjustifiable and unacceptable. But that is not what this case is about. This case is about the UAE's decision to single out and punish Qataris as a group, which the UAE admits arises out of its complaints against the Government of Qatar.

10. The UAE has engaged in violations of the human rights of the Qatari people that are guaranteed under the Convention, with the admitted purpose of coercing the State of Qatar, as a sovereign State, to comply with its entirely unjustified political demands. From the UAE's perspective, the greater the negative impact on the rights of individual Qataris, the greater the pressure on the State of Qatar to capitulate to the UAE's political demands. By its actions, the

---

[7] MQ, Vol. II: Ann. 1: UAE Ministry of Foreign Affairs, "UAE supports statements of Kingdom of Bahrain and Kingdom of Saudi Arabia on Qatar", 5 June 2017; judges' folder, tab 1.

[8] CR 2018/15, p. 38, para. 10 (Shaw).

[9] MQ, Vol. II, Ann. 18: "Here is the Full List of Demands Requested from Qatar", CNN Arabic (24 June 2017); Vol. II, Ann. 19, Taimur Khan, "Arab countries' six principles for Qatar 'a measure to restart the negotiation process'", *The National* (19 July 2017).

[10] CR 2020/6, p. 18, para. 9 (AlNaqbi).

[11] See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, pp. 107-108, para. 205.

UAE, in violation of the principles of human dignity and equality upon which the Convention is founded, has stripped away the fundamental rights and freedoms of Qataris en masse. As such, the UAE's actions go to the core of the very evil the Convention was designed to eradicate: conduct that both in its purpose and its effect constitutes racial discrimination and violates the principle set out in paragraph 3 of the preamble to the Convention, according to which "all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination"[12].

11. Since the filing of Qatar's Application over two years ago, the UAE has gone to considerable lengths to avoid both this basic truth and responsibility for its actions. The UAE's preliminary objections before you in these proceedings constitute more of the same.

12. For purposes of its first preliminary objection, the UAE argues that because its actions were "addressed to Qatari nationals on the sole basis of their nationality", they "fall outside the scope of the CERD"[13]. But that argument contradicts the proper interpretation of the Convention, which makes it clear that it is a landmark human rights instrument designed precisely to protect persons, within its broad sweep, from "racial discrimination" in all its manifestations. Indeed, the CERD Committee itself rejected this very same objection to its competence, and confirmed that "differences of treatment based on nationality" fall within the scope *ratione materiae* of the Convention[14].

13. As the Court stated last November in *Ukraine* v. *Russian Federation*, at the stage of preliminary objections "the Court does not need to satisfy itself that the measures . . . actually constitute 'racial discrimination' within the meaning of Article 1, paragraph 1, of CERD"[15]. Rather, the Court needs to assess only whether the UAE's measures are *capable* of negatively affecting the enjoyment of rights protected under the Convention[16].

---

[12] MQ, Vol. III, Ann. 92: CERD, preamble, para. 3.

[13] CR 2020/6, p. 21, para. 2 (Al Bastaki); see also POUAE, p. 33, para. 54.

[14] "Decision on the admissibility of the inter-State communication submitted by Qatar against the United Arab Emirates", CERD/C/99/4 (adopted 27 Aug. 2019), p. 13, para. 63, available at https://undocs.org/CERD/C/99/4; judges' folder, tab 2.

[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), Preliminary Objections, Judgment of 8 November 2019*, para. 94.

[16] See *ibid.*, paras. 95-96; see also *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, p. 315, para. 69.

14. As Qatar has explained, it is both the purpose and the effect of the UAE's measures to discriminate against Qataris, as a protected people of a distinct historical-cultural national origin. While the UAE may claim that it is "clear as a matter of history and as a matter of fact"[17] that Qataris do not have a distinct historical-cultural national origin, Qatar strongly disputes this statement and, unlike the UAE, has submitted independent expert evidence in support of its position[18]. That evidence has not been rebutted. On Qatar's case, the measures are clearly *capable* of constituting "racial discrimination" under the Convention based on the facts alleged by Qatar, and thus fall within the Court's jurisdiction, irrespective of the question of "current" nationality.

15. Allow me, Mr. President and honourable Members of the Court, to turn to the UAE's second preliminary objection. The UAE seeks to challenge Qatar's compliance with the Convention's Article 22 preconditions to the Court's jurisdiction.

16. As I stated, Qatar will not spare any effort to resolve the dispute and have the measures lifted. It cannot reasonably be disputed that Qatar fully engaged in good faith negotiations prior to coming before the Court — or at least ***repeatedly*** made genuine attempts to do so — only to be met with rejection by the UAE at every turn[19]. As the Court recently noted, "[d]iplomatic relations between Qatar and [the UAE, Saudi Arabia, Bahrain and Egypt] had been severed on 5 June 2017 . . . Senior officials of [those States] stated that they would not negotiate with Qatar, recalling the demands that they had addressed to Qatar."[20]

17. Qatar also invoked the conciliation mechanism available under the Convention in good faith. Even as the UAE advises the Court that it is now dropping its abuse of process objection, it should be recalled that it made the same argument before the CERD Committee, and the ***CERD*** Committee rejected it, specifically finding that each of the respective proceedings before the Court and the Committee had a distinct purpose and scope of decision[21].

---

[17] CR 2020/6, p. 21, para. 4 (Al Bastaki).

[18] MQ, Vol. VI, Ann. 162: Expert Report of Dr. J. E. Peterson (9 April 2019) (Excerpts); judges' folder, tab 3.

[19] See WSQ, pp. 113-120, paras. 3.45-3.59.

[20] *Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates* v. *Qatar), Judgment of 14 July 2020*, para. 96.

[21] See "Decision on the admissibility of the inter-State communication submitted by Qatar against the United Arab Emirates", CERD/C/99/4 (adopted 27 Aug. 2019), p. 5, paras. 20-22, pp. 10-12, paras. 42-52, available at https://undocs.org/CERD/C/99/4; judges' folder, tab 2.

18. The CERD Committee now has appointed an *ad hoc* conciliation commission to address Qatar's claims against the UAE and that conciliation process continues to this very day. Unfortunately, the UAE's conduct before the CERD Committee over the past two years has been far more disruptive than constructive. The UAE repeatedly has challenged the Committee's decisions and even attempted to circumvent the Committee by asking the Office of the High Commissioner for Human Rights and the United Nations Legal Counsel to intervene[22]. In these circumstances, while Qatar will continue to engage with all efforts to lift the UAE's measures, Qatar must also maintain its request that the Court rule on the lawfulness of the UAE's measures under the Convention.

19. Mr. President, honourable Members of the Court, I have had the privilege of appearing before you in relation to three different cases. Regrettably, on each and every one of these occasions, the UAE has chosen to meet Qatar's attempt to resolve this dispute with the same agenda of misinformation, attempting to justify its conduct by framing Qatar as a supporter of terrorism and extremism. These false allegations are nothing more than a flimsy shield the UAE continues to deploy to deflect attention from its wrongful conduct in violation of the Convention.

20. In short, Mr. President and distinguished Members of the Court, the UAE seeks to avoid the jurisdiction of this Court because it seeks to avoid the truth. This dispute is about the UAE's punitive discriminatory measures, which are intended to bend the State of Qatar to the UAE's political will by inflicting maximum suffering on the Qatari people. But, when it comes to protecting the fundamental human dignity and rights of its people, Qatar will pursue all legitimate means at its disposal. We appeal to the Court to uphold the international rule of law and vindicate the rights of Qatar and its people under the Convention by dismissing the UAE's ill-founded preliminary objections and proceeding to consider the merits of this case.

21. Mr. President, honourable Members of the Court, Qatar's distinguished counsel will now address the UAE's preliminary objections in greater depth, to explain why each one of them should be rejected.

---

[22] See Note Verbale of the United Arab Emirates, 17 Sept. 2019, pp. 1-2; judges' folder, tab 12.

22. First, Professor Pierre Klein will address how the facts underlying Qatar's claims demonstrate that the UAE has committed acts that fall within the scope *ratione materiae* of the Convention. Professor Klein will also explain the flaws in the UAE's interpretation of the Convention, demonstrating that the ordinary meaning of "national origin", read in context and in ***the*** light of the object and purpose of the Convention, encompasses current nationality.

23. Second, Ms Catherine Amirfar will make three main points. She will start by showing that when the Convention was drafted, it was intended that current nationality be encompassed in the term "national origin".

24. She will then explain that, in any event, the Court has jurisdiction over the dispute based upon the separate and alternative ground that the UAE's measures have a discriminatory purpose and effect upon persons of Qatari national origin in the historical-cultural sense. Finally, Ms Amirfar will turn to the point that Qatar's reading of the Convention is also in line with the interpretation and practice of the CERD Committee, which should be afforded "great weight"[23].

25. Third, Mr. Lawrence Martin will demonstrate that the UAE's second preliminary objection must also be rejected. Qatar has more than satisfied the preconditions to the Court's jurisdiction established by Article 22 of the Convention — which, per the Court's decision in *Ukraine* v. *Russian Federation*, are alternative and not cumulative.

26. Finally, Professor Nico Schrijver will show that the pleadings of both Parties chart a clear path to the merits phase. He will also explain how the UAE's proposed view of the Convention would undermine not only the Convention's effectiveness, but also the work of the CERD Committee.

27. Mr. President, honourable Members of the Court, I thank you for the privilege of appearing before you. I now kindly ask you, Mr. President, to invite Professor Pierre Klein to address the Court.

The PRESIDENT: I thank the Agent of Qatar for his statement. Je donne à présent la parole au professeur Pierre Klein. Vous avez la parole.

---

[23] *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 664, para. 66.

M. KLEIN : Je vous remercie, Monsieur le président.

II. LA PREMIERE EXCEPTION PRELIMINAIRE DOIT ETRE REJETEE : LE RECOURS AUX MOYENS D'INTERPRETATION VISES A L'ARTICLE 31 DE LA CONVENTION DE VIENNE SUR LE DROIT DES TRAITES MONTRE QUE LA DEMANDE DU QATAR ENTRE DANS LE CHAMP D'APPLICATION *RATIONE MATERIAE* DE LA CONVENTION

1. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, c'est un honneur pour moi d'intervenir dans la présente instance au nom de l'Etat du Qatar. Le cœur de l'argumentation développée par les Emirats arabes unis dans leur première exception préliminaire réside dans l'affirmation selon laquelle la demande du Qatar n'entrerait pas dans le champ d'application *ratione materiae* de la convention pour l'élimination de toutes les formes de discrimination raciale. Il en serait ainsi, selon nos contradicteurs, parce que le Qatar fonderait sa demande sur des discriminations dont ses ressortissants ont été victimes aux Emirats arabes unis en raison de leur nationalité. Or, font-ils valoir, la nationalité n'est pas reprise parmi les motifs de discrimination prohibés dans le texte de l'article premier, paragraphe 1, de la convention, qui vise plutôt l'interdiction de la discrimination sur la base de l'origine nationale. Et en l'occurrence, ces deux concepts — nationalité et origine nationale — seraient, d'après la Partie adverse, clairement distincts et ne se recouperaient en rien.

2. Ce que nos contradicteurs vous proposent avec cette argumentation, c'est en réalité une interprétation réductrice tout autant de la convention elle-même que de la plainte du Qatar. C'est ce que je souhaiterais vous montrer, en me concentrant, à ce stade, sur les moyens d'interprétation visés à l'article 31 de la convention de Vienne sur le droit des traités. M[e] Amirfar reviendra, quant à elle, tout à l'heure, sur la question de la portée exacte de la réclamation du Qatar.

3. Avant, toutefois, de vous emmener sur le terrain du droit, je souhaiterais, si vous le permettez, vous inviter à un petit détour dans le domaine des faits. Si ce détour s'avère nécessaire, c'est parce que, comme vient de le rappeler l'agent du Qatar, les Parties sont manifestement en désaccord sur l'analyse des événements qui se trouvent à la base du présent différend.

4. Ces questions de fait, le Qatar en convient bien volontiers, relèvent avant tout du fond. Comme vous l'avez observé dans votre arrêt de novembre 2019 dans l'affaire qui oppose l'Ukraine à la Russie, il n'est nullement besoin de vous assurer que les mesures en cause «constituent

effectivement une «discrimination raciale»» au sens de la convention[24]. Tout ce qui importe à ce stade est que ces mesures «entrent dans les prévisions de la convention»[25]. Tel est le seul but du petit *excursus* factuel qui va suivre. Les Emirats arabes unis voudraient en effet vous amener à conclure, sur la base du récit édulcoré qu'ils vous proposent, qu'il ne se serait produit en juin 2017 aucun événement susceptible d'entrer dans le champ de compétence de la Cour sur la base de la convention. Ce récit s'inscrit pourtant complètement en porte-à-faux avec la réalité des faits, tels qu'ils se sont produits. C'est ce que je voudrais vous montrer brièvement maintenant, afin de dissiper tout doute quant à l'existence en l'espèce d'un différend entre les Parties à la présente instance, qui entre bien dans le champ d'application de la convention.

A. La présentation des faits par les Emirats arabes unis est tronquée et les décisions qu'ils ont adoptées en juin 2017 constituent bel et bien des mesures restrictives empreintes de discrimination

5. Selon le premier volet de l'argumentation de nos contradicteurs relative aux faits de la cause, les autorités émiraties n'auraient donc adopté aucune mesure d'expulsion des Qatariens présents sur le territoire des Emirats arabes unis en date du 5 juin 2017. D'après la Partie adverse, la déclaration du 5 juin ne constituerait pas une mesure d'expulsion dès lors que les seules autorités nationales compétentes en la matière seraient celles du ministère de l'intérieur, qui n'a en l'occurrence adopté aucun acte officiel en ce sens[26]. Et ceci serait confirmé par la déclaration du 5 juillet 2018, par laquelle les autorités émiraties affirment qu'aucune mesure visant à l'expulsion des visiteurs et résidents du Qatar n'a été adoptée et indiquent que les Qatariens qui vivent aux Emirats ne doivent solliciter aucune permission pour continuer à résider dans le pays[27].

6. En vous proposant pareille lecture des événements, nos contradicteurs s'engagent en réalité dans un exercice de réécriture de l'histoire. Revenons aux faits, tels qu'ils se sont déroulés, et avant tout à la déclaration du 5 juin 2017 elle-même. Que dit-elle ? Très simplement, qu'elle «donn[e] aux résidents et visiteurs qatariens aux Emirats arabes unis 14 jours pour quitter le pays

---

[24] *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie), exceptions préliminaires, arrêt du 8 novembre 2019*, par. 94.

[25] *Ibid.*, par. 95.

[26] EPEAU, p. 25, par. 41 ; CR 2020/6, p. 22-23, par. 10 (Al Bastaki).

[27] *Ibid.*, p. 26, par. 42 et vol. III, annexe 58.

pour des raisons préventives de sécurité»[28]. Les termes, vous en conviendrez, sont dépourvus de toute ambiguïté et sont comminatoires : ***ils donnent*** aux résidents et visiteurs qatariens 14 jours pour quitter le pays, point final. C'est bien une injonction, immédiatement applicable endéans la période de 14 jours, qui est adressée par le ministère émirati des affaires étrangères aux résidents et visiteurs qatariens. Et c'est bien ainsi qu'elle est comprise et très largement relayée dès son adoption, tant par les médias traditionnels — dont l'agence de presse officielle des Emirats — que sur les médias sociaux[29]. C'est très clairement ainsi qu'elle est comprise également par les premiers concernés, les résidents et visiteurs qatariens eux-mêmes, qui quittent les Emirats arabes unis par milliers durant la première moitié du mois de juin 2017. Des mesures supplémentaires de mise en œuvre de cette déclaration n'étaient en rien nécessaires, que ce soit sous la forme d'ordres individuels d'expulsion par les autorités du ministère de l'intérieur, comme les Emirats le suggèrent maintenant, ou de toute autre manière. Le message était clair, et il est bien passé auprès de ses destinataires. Les différents témoignages annexés au mémoire du Qatar le confirment au-delà de tout doute[30]. Le but recherché était atteint : frapper le Qatar à travers la personne des Qatariens.

7. Face à cette évidence, la vision des faits que proposent nos contradicteurs se révèle pour ce qu'elle est vraiment : une tentative de se mettre à l'abri des conséquences d'une déclaration qu'ils ont tenté de répudier plus d'un an plus tard, par la déclaration complémentaire du 5 juillet 2018, à laquelle j'ai fait référence plus tôt. Pourtant, cette déclaration ultérieure — qui, étrange coïncidence, est publiée trois semaines après la saisine de la Cour et quelques jours seulement avant qu'elle rende son ordonnance en indication de mesures conservatoires — ne les aide en rien. Elle montre en effet, tout au contraire, la nécessité à laquelle se sont trouvées confrontées les autorités émiraties de rectifier le tir, de transmettre un message différent de celui communiqué au début juin 2017, dans l'espoir manifeste de vous convaincre que la demande en indication de mesures conservatoires présentée par le Qatar était dépourvue de fondement. Mais vous avez refusé, dans votre ordonnance du 23 juillet 2018, d'avaliser la vision des choses que vous proposaient nos contradicteurs. Rien ne justifierait une réponse différente aujourd'hui.

---

[28] MQ, vol. II, annexe 1.

[29] MQ, vol. II, annexe 45. Voir aussi *ibid.*, p. 25, par. 2.16 et suiv.

[30] MQ, p. 255-259, par. 5.35 et 5.37-5.39.

8. Cette conclusion s'impose d'ailleurs tout autant pour ce qui est du second volet de l'argumentation de nos contradicteurs en ce qui concerne les faits de la présente cause. Selon eux, en effet, il ne saurait être question d'une quelconque interdiction d'accès au territoire émirati pour les visiteurs qatariens. Les mesures imposées par les autorités émiraties dans ce domaine, en particulier la nécessité de solliciter une autorisation préalable d'accès au territoire par le biais d'une ligne téléphonique, puis d'un site Internet, ne seraient en fait que des mesures de contrôle d'immigration tout à fait classiques[31].

9. Mais ici encore, cette présentation tronquée des faits a bien peu à voir avec les événements qui se sont déroulés sur le terrain. Permettez-moi donc de revenir avec vous sur les différentes étapes des mesures prises par les Emirats arabes unis en vue d'empêcher ou de restreindre l'accès à leur territoire des visiteurs qatariens. Dans un premier temps, la déclaration du 5 juin 2017 énonce une interdiction tout à fait générale et inconditionnelle : il s'agit d'empêcher «les ressortissants qatariens d'entrer aux Emirats arabes unis ou de traverser ses points d'entrée»[32]. Ce n'est donc aucunement là une mesure de régulation de l'immigration ; c'est une prohibition pure et simple. Il n'existe, dès cette proclamation, plus aucune possibilité pour les Qatariens de pénétrer en territoire émirati.

10. En date du 11 juin 2017, la création d'une ligne d'appel permettant aux membres de familles mixtes de solliciter une autorisation d'entrer sur le territoire des Emirats est annoncée. Ceci, vous le noterez au passage, témoigne d'ailleurs en soi de la réalité des effets de la déclaration du 5 juin. Si elle avait été, comme l'affirment nos contradicteurs, une simple proclamation politique sans portée pratique, il n'aurait évidemment pas été nécessaire de procéder à une pareille annonce moins d'une semaine après la publication de la déclaration. Le fait que cette proclamation a en réalité eu des conséquences pratiques majeures a d'ailleurs été reconnu expressément par la Partie adverse en début de cette semaine, lorsqu'il a été fait référence de l'autre côté de la barre à la nécessité de rectifier les «imperfections» et les «défauts» de ces mesures initiales au vu de l'impact qu'elles avaient sur les résidents et visiteurs qatariens aux Emirats[33]. Il est décidément périlleux,

---

[31] EPEAU, p. 28, par. 47 ; CR 2020/6, p. 23, par. 11 (Al Bastaki).

[32] MQ, vol. II, annexe 1 («Preventing Qatari nationals from entering the UAE or crossing its points of entry»).

[33] CR 2020/6, p. 19, par. 11-12 (AlNaqbi).

Monsieur le président, Mesdames et Messieurs de la Cour, de prétendre dans le même souffle que rien de problématique ne s'est passé au début du mois de juin 2017 et qu'il a pourtant fallu prendre des dispositions pour remédier aux «imperfections» qui affectaient les mesures adoptées à ce moment-là par les autorités émiraties. En tout état de cause, cette procédure d'autorisation ne concernait que les membres de familles mixtes. Pour les autres Qatariens — étudiants, entrepreneurs ou commerçants, par exemple —, l'interdiction absolue d'accès au territoire émirati reste d'application. Une telle situation n'est évidemment en rien assimilable à des mesures de contrôle d'immigration classiques, comme tentent de le faire croire nos contradicteurs. Et ce n'est, à cet égard encore, pas la conclusion à laquelle vous êtes arrivés dans l'ordonnance du 23 juillet 2018.

11. Ce n'est qu'au début du mois de juillet 2018 — quelques jours, coïncidence toujours, après les audiences sur les ***premières*** mesures conservatoires — que le système de la demande d'autorisation préalable via une ligne téléphonique sera étendu à l'ensemble des ressortissants qatariens. Mais même après cette date, de nombreux témoignages dénoncent le caractère opaque et arbitraire de la procédure mise en place[34]. A les supposer avérées, les statistiques apparemment impressionnantes qui vous ont été présentées à ce sujet en début de cette semaine, selon lesquelles 95,5 % des demandes de séjour introduites par des Qatariens ont été approuvées en 2018[35], ne racontent qu'une partie de l'histoire. Ce bilan laisse dans l'ombre les situations de très nombreux Qatariens, qui se sont trouvés amenés à renoncer purement et simplement à introduire une telle demande ou à la faire aboutir. Comme le montrent de multiples témoignages annexés au mémoire du Qatar, nombreux sont en effet ceux qui ont mis un terme à ces démarches parce qu'ils se sont heurtés à l'impossibilité pratique d'entrer en contact avec un interlocuteur fiable en faisant usage de ladite ligne ou qu'ils ont été confrontés à l'hostilité des fonctionnaires émiratis qui administraient ce qui ne constitue en fin de compte qu'un dispositif de sécurité[36].

12. Qu'il s'agisse de la décision d'expulsion des résidents et visiteurs qatariens ou des mesures visant à interdire ou à restreindre l'accès des visiteurs qatariens au territoire des Emirats,

---

[34] MQ, p. 48, par. 2.34 et les annexes citées.

[35] CR 2020/6, p. 23, par. 11 (Al Bastaki).

[36] Voir MQ, p. 208-211, par. 4.45-4.48, p. 274-275, par. 5.72, p. 276, par. 5.75, p. 279-280, par. 5.79, p. 298-299, par. 5.109-110, et les annexes citées.

on est donc bien en présence de situations qui ne se limitent aucunement à de simples mesures de contrôle d'immigration. Il s'agit de décisions qui ciblent spécifiquement les résidents et visiteurs du Qatar, en les identifiant tous, sans distinction, comme des menaces pour la sécurité des Emirats. Ces mesures soumettent les Qatariens à un traitement défavorable et discriminatoire pour la seule raison qu'ils sont Qatariens. Les Qatariens, qui bénéficiaient jusque-là aux Emirats du statut plus favorable réservé aux ressortissants des Etats membres du Conseil de coopération du Golfe, non seulement s'en trouvent brutalement privés, mais se voient aussi soumis à un traitement foncièrement arbitraire et plus défavorable que celui réservé à n'importe quelle autre catégorie d'étrangers.

13. Enfin, je voudrais encore rappeler brièvement que les décisions adoptées en juin 2017 par les autorités émiraties ne se limitaient pas aux mesures d'expulsion et d'interdiction d'accès au territoire qui viennent d'être évoquées. De façon plus générale, les Emirats ont voulu frapper alors tout ce qui se caractérisait, d'une manière ou d'une autre, par son origine qatarie. Ce fut le cas, en particulier, de la censure imposée à l'encontre de tous les médias qatariens, qu'ils soient «généralistes», comme Al Jazeera, ou spécialisés, comme les chaînes sportives du groupe beIN, par exemple[37]. Les mesures visant à rendre punissables de peines sévères toute manifestation de sympathie à l'égard du Qatar — et par extension des Qatariens — s'inscrivent dans la même logique[38]. Et il en va encore de même de la campagne de désinformation et de haine anti-qatarienne menée à cette époque aux Emirats[39]. La volonté des autorités émiraties était on ne peut plus claire : cibler tout ce qui était, de près ou de loin, d'origine qatarienne, en vue d'exercer une pression maximale sur l'Etat du Qatar.

14. Il ne peut donc faire aucun doute que cette toile de fond factuelle répond pleinement aux conditions que votre Cour a énoncées dans l'arrêt de novembre 2019 dans l'affaire qui oppose l'Ukraine à la Russie : les différentes mesures que je viens de rappeler sont indéniablement

[37] MQ, p. 45-48, par. 2.42-2.44 et les annexes citées.

[38] MQ, p. 41-45, par. 2.37-2.41 et les annexes citées.

[39] MQ, p. 48-58, par. 2.45-2.60 et les annexes citées.

«susceptibles de porter atteinte à la jouissance de certains droits protégés par la [convention]» et elles «entrent dès lors dans les prévisions de cet instrument»[40].

15. Je voudrais maintenant, si vous le permettez, en venir aux questions d'interprétation du concept d'origine nationale dans le contexte de la convention pour l'élimination de toutes les formes de discrimination raciale, afin de démontrer que ce concept inclut la nationalité actuelle des personnes visées par des mesures illégitimes et disproportionnées.

B. L'interprétation du concept d'«origine nationale» selon les principes énoncés à l'article 31 de la convention de Vienne sur le droit des traités montre que ce concept inclut la nationalité actuelle

16. «Origine nationale», d'un côté, «nationalité», de l'autre. Ces deux concepts apparaissent à l'évidence bien proches. Mais seul le premier d'entre eux est explicitement visé dans l'article premier, paragraphe 1, de la convention comme motif de discrimination prohibé. Cela signifie-t-il pour autant que les discriminations qui seraient opérées sur la base de la nationalité ne peuvent jamais entrer dans le champ d'application de ce traité ? Les Parties à la présente instance ont, vous le savez, des opinions diamétralement opposées sur ce point. Et cette question a soulevé des préoccupations pleinement légitimes au sein de la Cour dès les premiers stades de la procédure dans le présent dossier. C'est pour cette raison que le Qatar entend vous proposer un exercice méthodique d'interprétation de la notion d'origine nationale dans le cadre de la convention. J'entamerai donc cet exercice par la discussion du sens ordinaire de ces termes, envisagés dans leur contexte et au regard de l'objet et du but de la convention.

C. Le sens ordinaire des termes «origine nationale» met en évidence leur texture ouverte

17. Il y a un point de départ qui paraît s'imposer d'emblée : le sens ordinaire du concept d'origine nationale est particulièrement ouvert. Lorsqu'on leur pose la question de la portée exacte de cette expression, les spécialistes des sciences humaines — qu'ils soient sociologues, politologues ou anthropologues — font tous la même réponse : il ne s'agit pas d'un terme de l'art qui aurait une signification prédéterminée clairement établie. Le concept est manifestement un

---

[40] *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie), exceptions préliminaires, arrêt du 8 novembre 2019*, par. 96.

composite, et c'est pour cette raison que les deux Parties ont procédé exactement de la même manière dans leur démarche visant à en établir le sens ordinaire : elles l'ont décomposé et ont examiné successivement le sens ordinaire de ses deux éléments : les termes «origine» et «national». Les deux Parties ont consacré des pages entières de leurs écritures à cet exercice, en se référant aux différentes versions linguistiques authentiques de la convention et, je tiens à vous rassurer, je n'entends nullement reprendre cet exercice par le menu aujourd'hui[41].

18. Je souhaiterais simplement me concentrer à ce stade sur les définitions des deux termes en cause, qui ont été utilisées par nos contradicteurs eux-mêmes pour vous montrer que ces définitions ne s'opposent en rien à l'inclusion de la nationalité actuelle d'un individu dans le concept d'origine nationale. Dans leurs exceptions préliminaires, les Emirats se réfèrent à la définition du mot «origin» donnée par le *Cambridge Dictionary* : «the country from which [a] person comes»[42]. Quant à «national», il s'agit — je me réfère toujours à nos contradicteurs — de l'adjectif dérivé du mot «nation», défini comme «the people living in, belonging to, and together forming, a single state»[43]. Si l'on met ensemble ces deux éléments de définition — tirés, je le rappelle, des écritures mêmes de nos contradicteurs —, le résultat est donc le suivant : l'origine nationale d'une personne, c'est sa provenance d'un pays dans le territoire duquel est établi le peuple auquel cette personne appartient. Cette provenance, cette appartenance peuvent avoir une dimension davantage historique, lorsqu'elles sont plus anciennes, remontant éventuellement à une ou plusieurs générations. Elles peuvent, dans certains cas, être déconnectées de la nationalité actuelle de la personne concernée. Mais dans bien d'autres situations, cette provenance, cette appartenance seront au contraire confirmées par le lien de nationalité : l'individu sera encore un ressortissant du pays dont il provient, qu'il l'ait quitté l'année précédente ou que ses ancêtres en soient partis trois générations plus tôt. En elles-mêmes, les notions d'origine nationale et de nationalité ne sont donc aucunement antithétiques. Tout au contraire, dans de nombreux cas, l'origine nationale d'une personne et sa nationalité coïncident. Comme M[e] Amirfar vous l'exposera tout à l'heure, tel est précisément le cas pour la quasi-totalité des Qatariens.

---

[41] MQ, p. 91, par. 3.29 et suiv. Voir aussi EEQ, p. 24, par. 2.19 et suiv.

[42] EPEAU, p. 40, par. 74.

[43] EPEAU, p. 41, par. 75.

19. C'est d'ailleurs exactement de cette manière que le concept d'origine nationale a été interprété dans le cadre d'autres instruments internationaux prohibant la discrimination sur la base de l'origine nationale et ne faisant *pas* mention de la nationalité. A plusieurs reprises, la Cour européenne des droits de l'homme a ainsi indiqué qu'à ses yeux, la nationalité devait être considérée comme incluse dans la notion d'origine nationale dans le cadre de l'article 14 de la convention européenne qui prohibe les discriminations[44]. Dans l'arrêt *Rangelov c. Allemagne*, par exemple, la Cour européenne a ainsi indiqué qu'elle allait examiner «whether the applicant in the present case has been treated differently, compared to prisoners in a relevantly similar situation, on grounds of his national origin, *namely* his Bulgarian nationality»[45].

20. La jurisprudence de la Cour interaméricaine des droits de l'homme et celle de la Commission africaine des droits de l'homme et des peuples vont dans le même sens[46]. Cette pratique, nos contradicteurs se sont prudemment abstenus de la commenter. Ils se sont limités à la repousser de manière globale en arguant que le Qatar tente d'étendre indument le champ d'application de la convention en se référant au principe de discrimination d'après le droit international coutumier et à des instruments auxquels les Emirats arabes unis ne sont pas parties[47]. Il ne s'agit pourtant nullement ici de tenter de sortir du cadre de la convention pour en déterminer le champ d'application, mais tout simplement de se référer à d'autres dispositions similaires à l'article premier de la convention pour confirmer que le sens ordinaire des termes «origine nationale» est largement reconnu comme susceptible d'inclure la nationalité actuelle des individus concernés. Cette façon de faire est pleinement conforme à la pratique suivie par la Cour elle-même dans ce domaine, comme elle l'a, par exemple, fait dans l'affaire *Diallo*, en se référant à la jurisprudence de la Cour européenne et de la Cour interaméricaine des droits de l'homme pour

---

[44] Voir, par exemple, Cour européenne des droits de l'homme (CEDH), *Bah c. Royaume-Uni*, requête n° 56328/07, arrêt (quatrième section), 27 septembre 2011, p. 18, par. 43 ; CEDH, *Kuric c. Slovénie*, requête n° 26828/06, arrêt (grande chambre), 26 juin 2012, p. 78, par. 394.

[45] CEDH, *Rangelov c. Allemagne*, requête n° 5123/07, arrêt (cinquième section), 22 mars 2012, p. 20, par. 89.

[46] Cour interaméricaine des droits de l'homme (CIADH), *Case of Expelled Dominicans and Haitians* v. *Dominican Republic*, arrêt, 28 août 2014, p. 122, par. 380. Voir aussi *ibid.*, p. 126, n° 447.

[47] CR 2020/6, p. 30, par. 13 (Bethlehem).

conforter son interprétation d'une disposition du Pacte international relatif aux droits civils et politiques[48].

21. En dernier lieu, permettez-moi de faire justice à l'argument de la Partie adverse, selon lequel le sens ordinaire des mots «origine nationale» ne pourrait inclure la nationalité, en raison du fait que cette dernière est essentiellement fluide. Nos contradicteurs tentent ainsi d'établir un contraste entre la nationalité, lien politique et juridique résultant de la volonté des Etats, et les autres motifs de discrimination prohibés mentionnés dans l'article premier qui seraient, quant à eux, immuables[49]. Cette conception du lien de nationalité s'avère en réalité éminemment contestable. Dans tous les pays qui fondent le lien de nationalité sur la loi du sang — comme c'est précisément largement le cas dans la région du Golfe —, ce concept n'a rien de fluide. Pour un nombre considérable d'individus sur la planète, la nationalité s'avère en fin de compte tout aussi immuable que la descendance ou l'origine ethnique par exemple. Et la chose était encore plus vraie à l'époque où la convention a été conclue et où un nombre considérable d'Etats soumettaient la naturalisation à des conditions particulièrement restrictives. Rien ne permet donc d'affirmer que l'argument avancé par la Partie adverse sur ce point était d'une quelconque manière présent à l'esprit des auteurs de la convention lorsqu'ils y ont incorporé le concept d'origine nationale — et nos contradicteurs ne citent d'ailleurs aucune source en ce sens.

22. En tout état de cause, l'inclusion du concept de nationalité dans celui d'origine nationale est également confirmée par la prise en compte du contexte constitué par les autres dispositions de la convention.

D. Le contexte de l'article premier, paragraphe 1, de la convention confirme que cette dernière prohibe les discriminations fondées sur la nationalité

23. Selon nos contradicteurs, l'inclusion de la nationalité actuelle dans le concept d'origine nationale aboutirait à des résultats inacceptables, parce qu'elle imposerait aux Etats parties à la convention de s'abstenir de toute différenciation de traitement entre leurs ressortissants et ceux d'autres Etats, ou entre différentes catégories de ressortissants étrangers. Cette interprétation irait

---

[48] *Ahmadou Sadio Diallo (République de Guinée c. République démocratique du Congo), arrêt, C.I.J. Recueil 2010 (II)*, p. 664, par. 68.

[49] EPEAU, p. 40-41, par. 76 ; CR 2020/6, p. 35, par. 36-37 (Bethlehem).

clairement à l'encontre de la pratique des Etats parties qui mettent constamment en application de telles différences de traitement en matière de liberté de circulation et d'octroi de visas, par exemple[50].

24. Il s'agit à l'évidence pour nos contradicteurs d'un argument déterminant, qui montrerait que la position du Qatar sur ce point est indéfendable. C'est le foulard rouge qui est agité sous vos yeux, pour tenter de vous convaincre des dangers dont serait porteuse l'inclusion de la nationalité actuelle dans le concept d'origine nationale. Mais comme la muleta du matador, cette argumentation vise avant tout à vous distraire et à vous dissuader de prendre acte du fait que la prise en compte du contexte de cette expression dans la convention permet de conclure que la discrimination fondée sur la nationalité actuelle d'une personne est bien prohibée sur la base de cet instrument. Et ceci sans qu'*aucune* des conséquences dramatiques mises en exergue par nos contradicteurs ne se vérifie. La considération fondamentale, à cet égard, est de s'entendre sur le sens exact du terme discrimination ; j'y reviendrai dans quelques instants.

25. Mais, dans l'immédiat, concentrons-nous sur le contexte de la disposition qui nous préoccupe. Le contexte qu'il convient de prendre en compte pour l'interprétation des termes «origine nationale» est avant tout celui de l'article premier de la convention lui-même. Le paragraphe 1 de cette disposition définit la discrimination raciale dans des termes qu'il n'est, je crois, plus nécessaire de vous rappeler à ce stade.

26. Mais est-il requis des Etats parties qu'ils traitent de la même manière toutes les personnes qui se trouvent sur leur territoire ? ***Clairement non.*** Le paragraphe 2 de l'article premier permet très expressément des différences de traitement en fonction de la nationalité des personnes concernées. Il dispose que

> «[l]a présente Convention ne s'applique pas aux distinctions, exclusions, restrictions ou préférences établies par un Etat partie à la Convention selon qu'il s'agit de ses ressortissants ou de non-ressortissants».

27. Le lien entre ces deux composantes de l'article premier est manifeste. Pourquoi s'est-il avéré nécessaire d'introduire dans le texte de cette disposition une clause autorisant des différences de traitement entre ressortissants et non-ressortissants — une différence de traitement donc

[50] EPEAU, p. 44, par. 82 et p. 63-69, par. 116-126 ; CR 2020/6, p. 36, par. 40 (Bethlehem).

manifestement fondée sur la nationalité ? De toute évidence, parce que de telles différences de traitement — fondées sur la nationalité — auraient autrement été incluses dans la définition de la discrimination raciale aux termes du paragraphe 1 et dès lors prohibées. En d'autres termes, si la nationalité actuelle n'avait pas été comprise comme motif de discrimination prohibé englobé dans le concept d'origine nationale, rien n'aurait imposé l'inclusion du paragraphe 2. Il n'y aurait évidemment aucun besoin d'autoriser un comportement qui serait déjà permis.

28. Enfin, le paragraphe 3 de l'article premier précise quant à lui qu'

> «[a]ucune disposition de la présente Convention ne peut être interprétée comme affectant de quelque manière que ce soit les dispositions législatives des Etats parties à la Convention concernant la nationalité, la citoyenneté ou la naturalisation, à condition que ces dispositions ne soient pas discriminatoires à l'égard d'une nationalité particulière».

Ici encore, des différences de traitement sont donc acceptables, tant qu'elles ne constituent pas une discrimination à l'égard d'une nationalité particulière. Ici encore, il faut se demander pourquoi les auteurs de la convention ont estimé nécessaire d'insister sur le fait que les discriminations opérées sur la base de la nationalité dans les domaines visés entre différentes catégories de ressortissants étrangers n'étaient pas admissibles dans le cadre de cet instrument. La réponse, une fois de plus, est simple : c'est parce qu'ils comprenaient que de telles discriminations fondées sur la nationalité entraient dans le champ d'application de la convention. Si tel n'était pas le cas, l'insertion de cette clause n'aurait, elle non plus, aucun sens.

29. Tous les exemples de pratique étatique sur lesquels nos contradicteurs appuient leur argumentation entrent manifestement dans le cadre des dispositions que nous venons d'examiner. Bien sûr, il est permis à un Etat, aux termes du paragraphe 2 de l'article premier, de limiter l'exercice de droits politiques ou l'accès à sa fonction publique à ses ressortissants. Bien sûr, la convention n'interdit pas à un Etat de reconnaître un droit de résidence préférentiel sur son territoire à des ressortissants d'Etats ou de groupes d'Etats particuliers. L'inclusion de la nationalité actuelle dans le concept d'origine nationale en tant que motif prohibé de discrimination ne fait en rien obstacle à une telle conclusion. Tout simplement parce que différences de traitement et discrimination sont deux choses bien différentes. Et autant les premières sont admissibles selon les clauses de l'article premier, autant les secondes ne le sont pas.

30. On en vient ainsi, finalement, au cœur du problème. En réalité, le vice de base de l'argumentation de nos contradicteurs réside dans ce qui paraît bien être une incompréhension fondamentale de la notion même de discrimination. Selon la jurisprudence absolument convergente de toutes les juridictions internationales qui ont précisé la portée de ce concept, la discrimination — et vous me pardonnerez ce rappel un peu scolaire — c'est une différence de traitement qui est dépourvue de motif légitime et qui ne présente pas de lien de proportionnalité raisonnable avec l'objectif visé par l'adoption de la mesure[51]. Où est, Monsieur le président, Mesdames et Messieurs de la Cour, la légitimité d'une mesure qui, à l'instar de celle adoptée par les Emirats arabes unis le 5 juin 2017, sanctionne tous les ressortissants d'un Etat en vue de faire pression sur ce dernier ? Où est la proportionnalité d'une mesure qui identifie indistinctement l'ensemble des ressortissants d'un Etat comme risque pour la sécurité et qui justifie leur expulsion sur cette base ? On les cherchera en vain. Et ceci montre bien que ces mesures ne constituent en rien des différences de traitement justifiées entre catégories d'individus en fonction de leur nationalité. Elles représentent au contraire des actes de discrimination inadmissibles, manifestement contraires à la convention.

31. Vous l'aurez compris, dire que la nationalité actuelle constitue bien un motif de discrimination prohibé dans le cadre de la convention ne revient nullement à remettre en cause les pratiques par lesquelles les Etats instituent des différences de traitement entre ressortissants et non-ressortissants ou entre différentes catégories de non-ressortissants. Ces pratiques sont licites aux termes mêmes de l'article premier, pour autant qu'elles ne soient ni arbitraires, ni dépourvues de proportionnalité par rapport au but qu'elles visent à atteindre. En revanche, ces deux clauses montrent clairement que si ces conditions ne sont pas remplies, les distinctions fondées sur la nationalité doivent être considérées comme discriminatoires. Si la nationalité actuelle n'avait pas été incluse dans le concept d'origine nationale, l'inclusion des paragraphes 2 et 3 dans l'article premier aurait tout simplement été inutile. En réalité, en s'appuyant sur ces pratiques étatiques pour tenter de fonder leur interprétation de la notion d'origine nationale, les Emirats

---

[51] Voir, par exemple, CIADH, *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion, No. OC-18/03, 17 septembre 2003, p. 96-97, par. 89 et 91 ; *ibid.*, *Marcelino Hanríquez et al.* v. *Argentina*, Report No. 73/00, Case No. 11.784, 3 octobre 2000, par. 37 ; Cour africaine des droits de l'homme et des peuples, *Tanganyika Law Society, the Legal and Human Rights Centre and Reverend Christopher R. Mtikila* v. *Tanzania*, requêtes nos 009/2011, 011/2011, arrêt au fond, 14 juin 2013, p. 50, par. 119 ; CEDH, *Marckx c. Belgique*, requête no 6833/74, arrêt, 13 juin 1979, p. 11, par. 33.

arabes unis font comme si ces autres composantes de l'article premier n'existaient tout simplement pas.

32. Comme je voudrais vous le montrer maintenant dans un dernier temps, l'interprétation du concept d'origine nationale défendue par le Qatar est également validée par la prise en compte de l'objet et du but de la convention.

E. La prise en compte de l'objet et du but de la convention confirme que son champ d'application s'étend aux discriminations fondées sur la nationalité actuelle

33. D'après les Emirats arabes unis, la déconnexion entre les concepts de nationalité et d'origine nationale serait encore apparente lorsqu'on interprète les termes de l'article premier, paragraphe 1, de la convention au regard de l'objet et du but de celle-ci. Nos contradicteurs mettent à cet égard l'accent sur l'intitulé et le préambule de la convention en relevant que l'un et l'autre sont focalisés sur la discrimination raciale en tant que telle et ne font apparaître aucune intention d'interdire les discriminations fondées sur la nationalité actuelle[52]. C'est au regard de ce constat qu'il faudrait interpréter la notion d'origine nationale comme étant fondamentalement différente de celle de nationalité.

34. La principale faiblesse de cet argument tient au fait qu'il est fondé sur une pétition de principe : la seule discrimination interdite par la convention serait celle fondée sur la race, qui ne pourrait par définition inclure le concept de nationalité. Mais la notion de race n'est précisément pas définie en tant que telle dans la convention — et je n'ai pas besoin, je crois, de vous rappeler à quel point le concept même de race, sa pertinence, sa recevabilité ont suscité des controverses aussi scientifiques que morales ou politiques depuis des décennies. C'est d'ailleurs pourquoi le Comité pour l'élimination de la discrimination raciale n'a jamais précisé le contenu du concept de race dans le contexte de la convention[53].

35. L'analyse que proposent les Emirats arabes unis de l'objet et du but de la convention est singulièrement limitée. Elle consiste, je l'ai indiqué, à se référer exclusivement au titre et au préambule de cet instrument pour en éclairer le sens, sans que l'analyse qu'ils en proposent soit

---

[52] EPEAU, p. 45-46, par. 84-85.

[53] Voir, par exemple, P. Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination*, Oxford, OUP, 2016, p. 135.

confortée par une quelconque autre source ou autorité[54]. La vision que vous propose la Partie adverse du but et de l'objet de la convention ignore le fait que les auteurs de la convention ont délibérément opté pour une approche large de la notion de discrimination raciale, en se référant non seulement à la race et à la couleur, mais en y incluant aussi les discriminations fondées sur l'ascendance et l'origine nationale ou ethnique. Elle ignore la conviction plus générale, clairement exprimée dans un autre paragraphe du préambule, que «tous les hommes sont égaux devant la loi et ont droit à une égale protection contre toute discrimination et contre toute incitation à la discrimination». Elle fait fi encore du souci, formulé sans la moindre ambiguïté lors des discussions qui ont entouré l'adoption de la convention, d'en faire un instrument intemporel, qui puisse trouver application face aux différentes formes de discrimination raciale telles qu'elles pourront se développer dans le temps[55].

36. Prétendre que les discriminations opérées sur la base de la nationalité actuelle ne peuvent tomber sous le coup de la prohibition de la discrimination raciale au titre de l'origine nationale, c'est en réalité ouvrir toute grande aux Etats la possibilité d'éviscérer le régime de protection institué par la convention. C'est leur permettre de mettre en place n'importe quelle politique discriminatoire visant des personnes ou des groupes qui répondent aux caractéristiques expressément mentionnées dans l'article premier, paragraphe 1, pour autant que l'adoption de ces politiques soit justifiée officiellement par référence, non à ces caractéristiques, mais à la seule nationalité actuelle des personnes ou groupes visés. Il est décidément difficile de voir comment un tel résultat pourrait être considéré comme compatible avec l'objet et le but de la convention.

37. Etant arrivé au terme de ce processus d'interprétation du concept d'origine nationale dans le cadre de la convention de 1965, je voudrais maintenant vous demander, Monsieur le président, de bien vouloir passer la parole à ma collègue M[e] Catherine Amirfar. Permettez-moi de vous remercier, Monsieur le président, Mesdames et Messieurs de la Cour, pour votre écoute attentive.

---

[54] EPEAU, p. 45-46, par. 84-85.

[55] Voir, par exemple, EEQ, p. 45-47, par. 2.58.

The PRESIDENT: I thank Professor Klein for his statement. Before I give the floor to Ms Amirfar, the Court will observe a coffee break of 10 minutes. The sitting is adjourned.

The Court adjourned from 4.10 to 4.25 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I will now give the floor to Ms Catherine Amirfar. You have the floor, Madam.

Ms AMIRFAR:

III. THE FIRST PRELIMINARY OBJECTION SHOULD BE REJECTED: SUPPLEMENTARY MEANS OF INTERPRETATION, QATARI NATIONAL ORIGIN IN THE HISTORICAL CULTURAL SENSE, AND THE CERD COMMITTEE'S INTERPRETATION AND PRACTICE ALL CONFIRM THAT THE UAE'S MEASURES FALL WITHIN THE SCOPE *RATIONE MATERIAE* OF THE CONVENTION

1. Mr. President, Madam Vice-President, honourable Members of the Court, it is a true privilege to appear before you again on behalf of the State of Qatar.

2. I begin with an overarching point about the necessary implications of the UAE's first preliminary objection. Qatar alleges that the UAE, motivated by the desire to coerce the State of Qatar into making political concessions, sought to inflict severe punishment on all Qataris, separating families, expelling students, cutting off individuals from their businesses and properties, and fanning the flames of hatred of an entire people. In so doing, the UAE singled out Qataris as a group and subjected them to differential treatment that clearly runs counter to the obligations to accord them equal enjoyment of human rights held under the Convention. Yet, the UAE asks the Court to determine conclusively at a preliminary objections stage that the Court lacks jurisdiction *to even consider its actions — just because the UAE says* that its measures are, in their words, "addressed to Qatari nationals on the sole basis of their nationality"[56]. If the UAE is right, a State could avoid its obligations under the Convention simply by casting its measures as nationality measures — allowing the would-be perpetrator to set the terms of its own compliance. This cannot have been the intent of drafters who sought to eliminate "all forms" of racial discrimination.

3. With your permission, Mr. President, I will proceed in three parts.

---

[56] CR 2020/6, p. 21, para. 2 (Al Bastaki).

4. *First*, I will show that a careful reading of the *travaux* attests to the drafters' intent to encompass nationality-based discrimination within the Convention's scope, thus confirming the interpretation set forth by Professor Klein under Article 31 (1) of the Vienna Convention on the Law of Treaties (VCLT).

5. *Second*, I will show that — independent of Qatar's position that the "national origin" ground encompasses nationality — the UAE's measures fall within the scope of the Convention because they also directly implicate individuals of Qatari national origin in the historical and cultural sense. Contrary to what we heard on Monday, this argument is nothing new.

6. *Third*, I address the CERD Committee's relevant interpretations and practice, which unequivocally confirm that the UAE's measures fall within the Court's jurisdiction. We heard very little on Monday regarding the CERD Committee's interpretations of the Convention and, rather remarkably, we heard *nothing at all* about the CERD Committee's conclusion that *the UAE's measures in particular fall within the Convention's scope*. Consistent with the Court's jurisprudence, Qatar requests that the Court ascribe great weight to the CERD Committee's interpretations.

A. Supplementary means of interpretation confirm that "national origin" encompasses current nationality

7. Turning to the first part of my presentation, as Professor Klein has explained, when read in its context and in light of the Convention's object and purpose, "national origin" under Article 1 (1) encompasses discrimination based on current nationality. But should the Court wish to confirm this interpretation, supplementary means of interpretation under Article 32 of the VCLT support this conclusion.

8. On Monday, you heard simply that the Convention was "carefully crafted and circumscribed by a definition of 'racial discrimination' which intentionally, by design, excludes 'nationality'"[57]. In parsing the definition of "racial discrimination" in Article 1 (1), Sir Daniel argued that the "distinction between nationality, on the one hand, and 'national or ethnic origin', on the other, *was and is* well understood"[58]. The *travaux* of the Convention, however, paint a different

[57] CR 2020/6, p. 30, para. 13 (Bethlehem).

[58] CR 2020/6, p. 35, para. 38 (Bethlehem); emphasis added.

picture and, taken as a whole, demonstrably do not support the UAE's argument that the drafters sought to exclude nationality-based discrimination from the Convention's scope[59].

9. As it stands, there appear to be two overarching points relating to the *travaux* on which the Parties agree. *First*, as the UAE acknowledged in its Preliminary Objections, the drafters of the Convention carefully considered whether "national origin" should be included in the definition of "racial discrimination" *because* some members understood the term to include current nationality[60]. As summarized in the sessions of the Third Committee of the United Nations General Assembly in 1965, "the term 'national origin' was open to different interpretations, even among countries speaking the same language"[61] and, indeed, some delegates understood it as "refer[ring] to citizenship" or as "equated with the word 'nationality'"[62].

10. *Second*, the context of the discussions reflected in the *travaux* makes clear that a concern of some delegates, including France and the United States, was that including the term "national origin" in the Convention might require States parties to afford rights normally reserved to their own citizens to non-citizens in their territory — for example, the right to vote[63]. The UAE acknowledged as much on Monday when it stated that "States considered, and still consider, that there were and remain lawful and permissible reasons for differential treatment between persons on grounds of nationality or citizenship"[64].

11. Yet this concern was not addressed by *expressly* excluding nationality from the scope of the Convention: all amendments to this effect — including one proposed by France and the United States that would have *explicitly* carved out nationality from the definition of "national origin"[65] — were *defeated* in favour of the provisions that ultimately became Article 1[66]. Yet the

---

[59] CR 2020/6, p. 36, para. 39 (Bethlehem).

[60] See POUAE, p. 57, para. 107; see also *ibid*., p. 54, para. 102, fn. 177.

[61] United Nations, *Official Records of the General Assembly (UNGAOR), Twentieth Session, Third Committee*, doc. A/C.3/SR.1304 (14 Oct. 1965), p. 85, para. 21; judges' folder, tab 5.

[62] Commission on Human Rights, "Report on the Twentieth Session", docs. E/3873, E/CN.4/874 (1964), p. 27, para. 100, judges' folder, tab 4; *UNGAOR, Twentieth Session, Third Committee*, doc. A/C.3/SR.1304 (14 Oct. 1965), p. 84, para. 15, judges' folder, tab 5.

[63] See MQ, p. 119, para. 3.75; *UNGAOR, Twentieth Session, Third Committee*, doc. A/C.3/SR.1304 (14 Oct. 1965), p. 84, para. 16, judges' folder, tab 5.

[64] CR 2020/6, p. 36, para. 39 (Bethlehem); see also POUAE, pp. 54-56, paras. 103-105.

[65] *UNGAOR, Twentieth Session, Third Committee*, doc. A/C.3/L.1212 (8 Oct. 1965); judges' folder, tab 6.

[66] POUAE, pp. 61-62, para. 114.

UAE still argues that what the France-United States amendment sought to do explicitly, the final text of Article 1 does implicitly[67].

12. That is just not the case. After the French-United States amendment was introduced, some delegates took exception to it[68]. For example, the Ghanaian delegate stated he "had strong objections to the French and United States proposal . . . because its explanation of 'national origin' was too sketchy", nor did he "agree with the view that the term 'nationality' had a universally accepted meaning"[69]. Likewise, the Polish delegate — who had previously taken the position that "[t]he deletion of the word 'national' from the Convention would imply that the [Third] Committee rejected the principle that all persons should be protected from any type of racial discrimination"[70] — stated that the "French and United States amendments . . . went too far"[71].

13. After these discussions, the Third Committee unanimously adopted what was referred to as the "Compromise Amendment", a proposal sponsored by nine States, including the Ghanaian and Polish delegates[72]. This Compromise Amendment added to Article 1 (1) the eventual final text of Articles 1 (2) and 1 (3)[73]. These two provisions made the final text of Article 1 — to quote the French delegate — "entirely acceptable" to the delegations of France and the United States[74].

14. To state the obvious, the nine-State proposal that prevailed was called the Compromise Amendment precisely because it was a compromise. It sought to bridge the gap between the delegates that were concerned about leaving particularly vulnerable groups outside the scope of the Convention and those concerned with reserving particular rights to citizens in a way that the proposed amendments to exclude nationality from "national origin" could not. The final

---

[67] POUAE, pp. 61-62, para. 114.

[68] See MQ, pp. 120-124, paras. 3.78-3.82.

[69] *UNGAOR, Twentieth Session, Third Committee*, doc. A/C.3/SR.1306 (15 Oct. 1965), p. 92, para. 12; judges' folder, tab 7.

[70] *UNGAOR, Twentieth Session, Third Committee*, doc. A/C.3/SR.1304 (14 Oct. 1965), pp. 83-84, para. 5; judges' folder, tab 5.

[71] *UNGAOR, Twentieth Session, Third Committee*, doc. A/C.3/SR.1304 (14 Oct. 1965), p. 84, para. 6; judges' folder, tab 5.

[72] *UNGAOR, Twentieth Session, Third Committee*, doc. A/C.3/SR.1307 (18 Oct. 1965), p. 1, paras. 1, 8-10, 17; judges' folder, tab 9.

[73] *UNGAOR, Twentieth Session, Third Committee*, doc. A/C.3/L.1238 (15 Oct. 1965); MQ, p. 122, para. 3.80; judges' folder, tab 8.

[74] *UNGAOR, Twentieth Session, Third Committee*, doc. A/C.3/SR.1307 (18 Oct. 1965), p. 95, para. 8; ***judges' folder, tab 9;*** MQ, pp. 120-124, paras. 3.78-3.82.

text of Article 1 addressed the drafters' competing concerns by retaining the full scope of the term "national origin" and its inherent flexibility to encompass "current" nationality, while at the same time explicitly preserving States' abilities to reserve rights to their citizens and to legislate in the areas of nationality, citizenship and naturalization, but "provided that such provisions do not discriminate against any particular nationality" in doing so.

15. Accordingly, the *travaux* confirm that the drafters intended to leave sufficient flexibility for the Convention to address discrimination implicating ***current*** nationality as a matter of Article 1 (1), especially in circumstances where, as here, a State singles out an entire group of non-nationals for discriminatory treatment.

B. The Court has jurisdiction *ratione materiae* because the UAE's measures discriminate against persons of Qatari national origin in both purpose and effect

16. I turn now to the second part of my presentation.

17. As I noted at the outset, the UAE submits that its measures are not "based on" national origin because "each UAE measure or action is expressly based on 'nationality' or directly implicates Qatari nationals *only*"[75]. But the UAE's argument both misstates Qatar's claims and the legal framework for combatting racial discrimination established by the Convention. As I will explain, the UAE's measures are "based on" national origin because they directly implicate persons of Qatari national origin for discriminatory treatment — not only in the sense of nationality, but also in a historical-cultural sense of national origin — with both the purpose and the effect of impairing their enjoyment of protected rights[76]. As such, irrespective of the Parties' opposing positions on "nationality", the UAE's measures are, to use the words of the Court in *Ukraine* v. *Russian Federation*, "capable of having an adverse effect on the enjoyment of certain rights protected under CERD" and "fall within the provisions of the Convention."[77]

18. The UAE makes three main arguments in response, which I will address in turn.

---

[75] CR 2020/06, p. 39, para. 6 (Sheeran), emphasis in original; see also CR 2020/06, p. 21, paras. 2-3 (Al Bastaki); *ibid*., p. 22, para. 7; *ibid*., p. 26, para. 20; CR 2020/6, p. 29, para. 10 (Bethlehem); CR 2020/6, p. 39, paras. 5-6 (Sheeran); *ibid*., p. 44, para. 23; *ibid*., p. 46, para. 31; *ibid*., p. 48, para. 36; *ibid*., p. 52, para. 56; POUAE, p. 37, para. 64; *ibid.*, p. 40, para. 72.

[76] AQ, p. 3, para. 6; *ibid*., pp. 26-27, para. 33; MQ, Chap. III, Sect. I.B; WSQ, Chap. II, Sect. III.

[77] *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), Judgment, 8 November 2019*, para. 96.

19. *First*, I will address why, contrary to the UAE's submissions on Monday[78], Qataris constitute a protected group under the Convention by virtue of their distinct national origin in a historical and cultural sense.

20. *Second*, I will explain why the UAE's measures fall within the Convention's provisions in light of the UAE's treatment of this group.

21. *Finally*, I will address how the UAE fundamentally mischaracterizes Qatar's claims as asserted in its pleadings, including with respect to the UAE's position that Qatar's case is "not an indirect effects case"[79].

1. Persons of Qatari national origin are protected under the CERD

22. On Monday, the UAE's representatives submitted that Qataris and Emiratis are "united by a common origin"[80] and on that basis proclaimed the "artificiality of the supposed racial distinctions" between the two[81]. Qatar does not dispute the close ties between the Emirati and the Qatari peoples. These ties are, as Qatar has explained[82], a key feature in why the UAE's measures inflicted such severe suffering among Qataris. But this does not mean that Qataris do not have a distinct national origin.

23. Qatar's expert, Dr. John Peterson — a historian and political scientist with expertise in the historical-cultural roots of national identity in the Middle East (including Qatar) — traces the historical roots of Qatari identity, culminating in the political, social, and cultural evolution of modern-day Qatar. In his report, excerpts of which are at tab 3 in your judges' folder, he documents the existence of Qataris as a distinct people, as a group of individuals who belong to a long-standing historical-cultural community defined by a distinct heritage, particular family or tribal affiliations, shared national traditions and culture, and geographic ties to the peninsula of Qatar[83].

---

[78] See CR 2020/6, pp. 21-22, para. 4-7 (Al Bastaki); CR 2020/6, p. 41, para. 13 (Sheeran).

[79] CR 2020/6, pp. 31-32, para. 22 (Bethlehem).

[80] CR 2020/6, p. 21, para. 4 (Al Bastaki); see also CR 2020/6, p. 17, para. 4 (AlNaqbi).

[81] CR 2020/6, p. 21, para. 5 (Al Bastaki).

[82] See e.g. AQ, p. 3, para. 6; *ibid.*, pp. 25-26, paras. 29-32; MQ, p. 18, para. 2.6; *ibid.*, pp. 38-40, para. 2.33.

[83] MQ, Vol. VI, Ann. 162, Expert Report of Dr. J. E. Peterson, judges' folder, tab 3; see also MQ, pp. 131-134, paras. 3.96-3.100.

24. Notably, the UAE has not submitted any evidence contradicting this conclusion. The statements from the UAE's representatives on Monday do not bear on this point: they are before the Court as advocates, not to give evidence in these proceedings subject to the Rules of Court[84].

25. In any event, the UAE's attempt on Monday to diminish Qatari identity as simply a legal nationality is at odds with Dr. Peterson's unrebutted report. It is at odds with the lived experience of the Qatari people, as documented in the declarations submitted with Qatar's Memorial, who describe the importance of their Qatari identity to their individual self-expression — and the extent to which they were inhibited in this expression by the UAE's measures[85]. It is at odds with the UAE's own nationality laws, highlighted by its representative on Monday[86], which previously gave preferential treatment to individuals of "Qatari . . . origin"[87] — origin, not nationality. Indeed, it is also at odds with the submissions of the UAE's own counsel, who have recognized the "Qatari national origin" or "Qatari heritage" of, for example, children born to Qatari mothers but possessing another nationality, or Qatari women who have rescinded their citizenship upon marriage[88].

26. The UAE has said much about what it believes "national origin" does *not* protect. It has said little about what it does protect. Yet even based on the few descriptions of national origin that the UAE has provided — for example, a person's "heritage"[89] or "permanent association with a particular nation of people"[90] — it is clear that Qataris constitute a protected group based on national origin. The UAE's measures fall within the Convention's provisions because they directly implicate this group, independently of the question of nationality.

---

[84] See e.g. Rules of the International Court of Justice, Art. 64; see also *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 231, para. 27, separate opinion of Judge Greenwood.

[85] See e.g. MQ, pp. 31-33, para. 2.25; *ibid.*, p. 140, para. 3.111; *ibid.*, p. 320, para. 5.148.

[86] CR 2020/6, p. 21, para. 5 (Al Bastaki).

[87] MQ, Vol. II, Ann. 37, United Arab Emirates Federal Law No. 17 of 1972 on Citizenship and Passports (18 Nov. 1972), Art. 5; see also MQ, p. 137, paras. 3.105-3.106.

[88] See CR 2020/6, pp. 45-46, para. 29 (Sheeran); CR 2018/13, pp. 38-39, para. 19 (Olleson).

[89] CR 2018/13, p. 38, para. 19 (Olleson).

[90] POUAE, p. 46, para. 86.

2. The UAE's measures discriminate against Qataris on the basis of national origin in both purpose and effect

27. By its plain terms, Article 1 (1)'s definition is a composite concept. It involves a "*distinction, exclusion, restriction or preference based on"* a protected ground, and with either "the *purpose or effect* of impairing the recognition, enjoyment or exercise" of human rights and fundamental freedoms on an equal basis[91].

28. The term "based on" is not limited to instances where a protected group is *expressly* targeted. To quote Judge Crawford in *Ukraine* v. *Russian Federation,* Article 1 (1) "does not require that the restriction in question be *based expressly on* racial or other grounds enumerated in the definition; it is enough that it *directly implicates* such a group on one or more of these grounds"[92]. Likewise, the CERD Committee has stated that "the words 'based on' do not bear any meaning different from '*on the grounds of*'"[93]. As to the second part of the definition, the disjunctive "or" in "purpose or effect" makes clear that the Convention does not require a discriminatory purpose[94]. Bringing these points together, in General Recommendation No. XIV, the CERD Committee explained that "[i]n seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an *unjustifiable disparate impact* upon a group distinguished by race, colour, descent, or national or ethnic origin"[95].

29. A measure may thus be "based on" a ground listed in Article 1 (1) if it factually implicates a protected group[96]. In other words, the Convention protects against both direct

---

[91] CERD, Art. 1 (1); emphasis added.

[92] *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. 215, para. 7, declaration of Judge Crawford; emphasis added.

[93] CERD Committee, General Recommendation No. XIV on Article 1, paragraph 1, of the Convention, UN doc. A/48/18 (1993), paras. 1-2; judges' folder, tab 10.

[94] *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*, p. 215, para. 7, declaration of Judge Crawford.

[95] CERD Committee, Committee, General Recommendation No. XIV on Article 1, paragraph 1, of the Convention, UN doc. A/48/18 (1993), para. 2, judges' folder, tab 10; see also CERD Committee, General Recommendation No. XXXII on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, UN doc. CERD/C/GC/32 (24 Sept. 2009), para. 7; CERD Committee, Concluding observations on the fourth to sixth periodic reports of the United States of America, UN doc. CERD/C/USA/CO/6 (8 May 2008), para. 10; CERD Committee, Concluding observations on the combined seventh to ninth periodic reports of the United States of America, UN doc. CERD/C/USA/CO/7-9 (25 Sept. 2014), para. 5.

[96] See CERD Committee, *D.R.* v. *Australia*, Communication No. 42/2008, Opinion, UN doc. CERD/C/75/D/42/2008 (14 Aug. 2009), para. 7.2.

discrimination, where the challenged measure *expressly* distinguishes on the basis of a protected ground, and indirect discrimination, where the measure is not framed in such terms *on its face*, but *in fact* distinguishes on the basis of a protected ground[97].

30. While the UAE acknowledges that the definition of Article 1 (1) may be engaged where a measure "directly implicates" a protected group[98], the UAE nevertheless takes the position that "[t]he case brought by Qatar is in respect of measures that are *addressed to* Qatari nationals"[99], and thus "there is nothing before the Court to support a conclusion that the UAE's measures are 'based on' national origin"[100].

31. The UAE is mistaken, in three respects.

32. To begin with, the UAE's measures are not exclusively "addressed to" Qatari nationals, even on their face. As Qatar explained in its written submissions, the Anti-Qatari incitement campaign and the Anti-Sympathy Law operate to single out Qataris on the basis of personal characteristics — not as Qatari nationals[101]. These measures penalize individuals of Qatari origin based on their expression of, or identification with, their national origin — for example, by displaying Qatari national traditions and culture, speaking with a Qatari accent, or wearing Qatari dress[102].

33. Further, while the block on Qatari Media directly targeted Qatari companies, it also infringed upon the freedom of expression of Qatari ideas and culture in a broader sense, and contributed to the climate of fear experienced by Qataris as a direct result of their Qatari identity being targeted[103].

34. As Qatar's evidence demonstrates, Qataris who remained in the UAE after 5 June 2017 recount experiences in which "they were afraid" of being identified as Qatari and targeted by

---

[97] See MQ, pp. 80-82, paras. 3.11-3.14; WSQ, pp. 76-79, paras. 2.112-2.117.

[98] CR 2020/06, p. 39, para. 6 (Sheeran).

[99] CR 2020/06, p. 31, para. 22 (Bethlehem); emphasis added.

[100] CR 2020/06, p. 39, para. 5 (Sheeran).

[101] See e.g. AQ, pp. 1-3, paras. 3-4; *ibid.*, p. 3, para. 6; *ibid.*, pp. 20-21, paras. 24-25; *ibid.*, pp. 29-32, paras. 36-39; MQ, Chap. II, Sect. II.C; WSQ, pp. 20-21, paras. 2.12-2.13; *ibid.*, p. 75, para. 2.110.

[102] See MQ, pp. 57-58, para. 2.59; *ibid.*, pp. 130-131, para. 3.95; *ibid*., p. 140, para. 3.111, fn. 351. See e.g. MQ, Vol. IX, Ann. 222, DCL-105, paras. 10-11; MQ, Vol. X, Ann. 236, DCL-139, para. 9; MQ, Vol. X, Ann. 243, ***DCL-148,*** p. 3, para. 1; MQ, Vol. VIII, Ann. 198, DCL-066, paras. 23-25.

[103] MQ, p. 334, para. 5.171.

Emiratis, especially UAE security officials, due, for example, to their traditional Qatari dress — which differs as compared to Emirati dress in colour, headdress, collar and cufflinks — or their distinct Qatari accent[104].

35. *Second*, the UAE is mistaken when it argues that "[t]here is nothing to support Qatar's *ex post facto* rationalization that the UAE's immigration controls in fact are targeted to those of Qatari national origin"[105]. On Qatar's case, each of the UAE's measures — including the Expulsion Order and Travel Bans — is "based on" Qatari national origin because the UAE *deliberately targeted* this group. In its written submissions, the UAE agrees that measures are "based on" a protected ground in the sense of Article 1 (1), even if expressly framed in other terms, if, in their words, "the criteria used are a vehicle for disguised racial discrimination as defined in the CERD"[106]. That is exactly what Qatar alleges the UAE has done. In its Application and Memorial, Qatar demonstrates the UAE's measures are not about "basic immigration control[s]"[107]; to the contrary, they are designed to target Qataris as a people, not just as holders of a specific passport, in order to extract political concessions from the State of Qatar[108]. Indeed, while the UAE cites to what it calls a "clarifying statement" made on 5 July 2018 in the course of the first provisional measures proceedings[109], the actual expulsion order itself expressly is not limited to "Qatari nationals", but refers instead to "Qatari residents and visitors in the UAE"[110].

36. The UAE's position rings particularly hollow in the specific factual context of the Gulf region. The UAE is well aware that Qatari nationals are overwhelmingly individuals of Qatari parentage and heritage[111], such that any targeting of Qatari nationals necessarily includes targeting of persons of Qatari origin. The UAE should be presumed to have intended the natural — indeed,

---

[104] MQ, Vol. VII, Ann. 172, DCL-013, para. 31; MQ, Vol. VII, Ann. 180, DCL-028, para. 20; MQ, Vol. IX, Ann. 211, DCL-086, para. 12.

[105] CR 2020/6, p. 46, para. 31 (Sheeran).

[106] POUAE, p. 72, para. 133; CR 2018/13, p. 42, para. 35 (Olleson).

[107] POUAE, p. 29, para. 47.

[108] See e.g. AQ, pp. 18-27, paras. 23-33; MQ, pp. 4-5, paras. 1.8-1.9; *ibid*., p. 9, para. 1.19; *ibid*., p. 126, para. 3.88; WSQ, pp. 86-87, paras. 2.128-2.129.

[109] CR 2020/6, p. 47, para. 34, fn. 80.

[110] MQ, Vol. II, Ann. 1, UAE Ministry of Foreign Affairs, "UAE supports statements of Kingdom of Bahrain and Kingdom of Saudi Arabia on Qatar" (5 June 2017), p. 2.; judges' folder, tab 1.

[111] MQ, p. 139, para. 3.110; see e.g. CR 2020/6, p. 40, para. 10 (Sheeran).

the inevitable — consequences of its actions, especially as the UAE's explicit overall design was to pressure Qatar, including by targeting the people connected to it.

37. *Third*, notwithstanding the UAE's careful phrasing on Monday that nationality was "both the focus and the effect" of its measures[112], this does not make it true: as Qatar explained in detail in its written submissions, the UAE's measures *in fact* directly implicate persons of Qatari national origin by singling them out for discriminatory treatment, and are thus "based on" national origin[113]. The UAE's only response on Monday — indeed, its only response to date — was to argue that "[p]ersons of Qatari national origin but not having Qatari nationality were neither addressed nor affected by the measures"[114]. But this is just counsel offering after-the-fact evidence of the intentions of the UAE.

38. But the argument also ignores that even with respect to measures expressly targeted at Qatari citizens, such as the travel bans, Qatar's evidence includes declarations of non-Qatari nationals. One of those declarants has lived in Qatar for over sixty years, and was rejected entry to the UAE on at least two occasions because "the immigration officer saw me as Qatari because of the way I was dressed"[115], while his travel companions — neither of them wearing traditional Qatari dress — were allowed to enter[116]. The other, who "identif[ies] completely as Qatari" but is not a Qatari citizen, has travelled to the UAE on multiple occasions since 5 June 2017 to visit his Emirati wife, and describes how he has been subjected to interrogation by Emirati security officials each time just because his passport lists that he was born in Qatar[117]**.** ***T***hese are not examples of "imperfection[s]" in the implementation of the UAE's measures[118], but rather how they were broadly implemented by Emirati officials[119].

---

[112] CR 2020/6, p. 21, para. 2 (Al Bastaki).

[113] MQ, pp. 137, paras. 3.107-3.113; WSQ, pp. 79-87, paras. 2.118-2.129.

[114] CR 2020/6, p. 29, para. 10 (Bethlehem).

[115] MQ, Ann. 223, DCL-107, para. 10.

[116] MQ, Ann. 223, DCL-107, para. 11.

[117] MQ, Ann. 210, DCL-084, pp. 5-6, paras. 5-8.

[118] CR 2020/6, p. 19, para. 11 (AlNaqbi); *ibid*., p. 52, para. 55 (Sheeran).

[119] See e.g. MQ, p. 253, para. 5.32; ibid. pp. 266-267, para. 5.56; ibid. pp. 275-278, paras. 5.73-5.77.

3. Qatar's claims are not limited to "nationality"

39. Thus Qatar's case does not, in the UAE's words, "turn *entirely on nationality*"[120]. Perhaps recognizing the inevitability of this conclusion, the UAE on Monday took a different tack. In what Sir Daniel framed as a "preliminary and pre-emptive response" to the arguments he "anticipate[d]"[121] Qatar would put forward, the UAE argued that irrespective of whether the UAE's measures *in fact* targeted, or had an effect on Qataris, on the basis of their national origin, the Court lacks jurisdiction because "the case that [Qatar] has brought is not an indirect effects case"[122].

40. Sir Daniel is not being unusually prescient here: the UAE "anticipates" Qatar's arguments because Qatar has made them, repeatedly, in its submissions before the Court and before the CERD Committee — in other words, the very materials the UAE insists reveal "the true subject-matter of Qatar's case"[123]. Notwithstanding the UAE's attempts to cherry-pick from Qatar's pleadings in support of its argument[124], Qatar has from the beginning framed its case as one of discrimination "based on" national origin, including in the sense of intentional targeting and of disparate impact[125]. For example, Qatar's Application alleges that the UAE "unlawfully targeted Qataris on the basis of their national origin"[126] and that the measures had "devastating" and "disproportionate" impacts on Qataris' human rights[127]. Qatar's subsequent pleadings expand upon these points in detail[128]. Qatar's Application and subsequent pleadings also make clear that it challenges measures that are on their face unrelated to "nationality"[129].

---

[120] CR 2020/6, p. 29, para. 10 (Bethlehem); emphasis added.

[121] CR 2020/6, p. 31, para. 21 (Bethlehem).

[122] CR 2020/6, pp. 31-32, para. 23 (Bethlehem).

[123] CR 2020/06, p. 32, para. 24 (Bethlehem).

[124] See e.g. CR 2020/6, pp. 42-44, paras. 18-19 (Sheeran).

[125] See e.g. AQ, pp. 1-6, paras. 2-8; *ibid*. pp. 16-20, paras. 22-28; *ibid.* Sect. III.B; *ibid.*, pp. 39-44, paras. 54, 56, 58-60; *ibid*., 45-50, paras. 62-64; MQ, Chap. I, Sect. I; *ibid.*, Chap. III, Sect. I.B.2; WSQ, Chap. II, Sect. I; *ibid*., Chap. II, Sect. III; see e.g. Annex 29 to Documents Submitted by the State of Qatar, Provisional Measures (30 Apr. 2019), ICERD-ISC-2018/2, Response of the State of Qatar (14 Feb. 2019), pp. 30-32, paras. 53-57; *ibid*. p. 34-36, paras. 60-63.

[126] AQ, p. 39, para. 54.

[127] AQ, pp. 25-26, paras. 30, 33.

[128] See e.g. MQ, pp. 4-7, paras. 1.8-1.15; *ibid.* pp. 8-9, paras.1.18-1.19; *ibid.* pp. 56-58, paras. 2.58-2.59; *ibid.*, Chap. III, Sect. I.B.2; *ibid.*, pp. 130-131, para. 3.95; *ibid*., p. 140, para. 3.111 and fn. 351; WSQ, p. 10, para. 1.18; *ibid.*, pp.13-15, paras. 2.1-2.4; *ibid*., Chap. II, Sect. I; *ibid*., Chap. II, Sect. III; *ibid*. p. 84, para. 2.125, fn.235.

[129] See e.g. AQ, pp. 1-3, paras. 3-4; *ibid.*, p. 3, para. 6; *ibid*. pp. 20-21, paras. 24-25; *ibid.* pp. 29-32, paras. 36-39; MQ, Chap. II, Sect. II.C; WSQ, pp. 20-21, paras. 2.12-2.13; *ibid*. p. 75, para. 2.110.

41. The UAE's strategic decision to ignore these pleadings in its written submissions[130] does not compel the Court to do the same in determining the subject-matter of the dispute on an objective examination of the pleadings[131]. Alternatively, the Court could consider that these arguments arise "directly out of the question which is the subject-matter of that Application"[132] and constitute neither "a new claim" nor a "***new*** title of jurisdiction" but simply an alternative argument "in support of [Qatar's] original claim"[133].

42. Accordingly, for each of the reasons I have described, and irrespective of the question of nationality, the UAE's measures fall within the CERD's scope *ratione materiae*, and the Court has jurisdiction to proceed to consider the UAE's measures on the merits.

C. The CERD Committee has confirmed that the UAE's measures fall within the Convention's scope *ratione materiae*

43. As the final part of my presentation, I now turn to the CERD Committee's conclusion that the UAE's measures in particular fall within the Convention's scope. Consistent with the Court's jurisprudence, Qatar requests that the Court ascribe great weight to the CERD Committee's interpretations.

1. The Court should ascribe great weight to the CERD Committee's interpretation

44. The purpose of the CERD Committee is to monitor the effective implementation of the Convention. The Committee interprets the Convention in pursuit of this purpose, through its opinions and decisions on individual communications, its concluding observations on State reports and its General Recommendations. As acknowledged by the United Nations Office of Legal Affairs, the CERD Committee's interpretations are highly significant in delineating the scope of the Convention and assisting States parties in implementing their obligations under the Convention[134].

---

[130] See generally POUAE; see also WSQ, pp. 4-6, paras. 1.7-1.10.

[131] *Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile), Preliminary Objections, Judgment, I.C.J. Reports 2015 (II)*, p. 603, para. 26.

[132] *Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 266, para. 67 (citing *Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), Merits, I.C.J. Reports 1974*, p. 203, para. 72); see also *Territorial and Maritime Dispute (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, pp. 695-697, paras. 109-115.

[133] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Judgment, I.C.J. Reports 2015 (I)*, pp. 54-55, para. 109.

[134] *UNGAOR, Fortieth Session*, Summary Record of the 46th Meeting, doc. A/C.3/40/SR.46 (25 Nov. 1985), p. 8, para. 27.

Certainly, during the first provisional measures proceedings, the UAE appeared to agree, acknowledging that the Committee is "the organ that the authors of the Convention established as its guardian"[135].

45. The Court has already had the opportunity to refer to the interpretations of United Nations human rights treaty bodies of the instruments that they monitor. For example, in the *Wall* Advisory Opinion, the Court referred to the decisions and "constant practice of the Human Rights Committee" in support of the Court's interpretation of the ICCPR, including regarding its jurisdictional scope[136].

46. Similarly, in its Judgment in the *Diallo* case, the Court stated that "it should ascribe *great weight*" to the interpretation adopted by the Human Rights Committee, as the "independent body that was established specifically to supervise the application of that treaty" in order to "achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with treaty obligations are entitled"[137]. These considerations are of paramount importance and apply equally to the practice of the CERD Committee, which is the oldest United Nations human rights treaty body.

2. The Committee has concluded that the UAE's measures fall within the Convention's scope *ratione materiae*

47. In nearly a half-century of practice, the CERD Committee has spoken, to confirm expressly, unequivocally and repeatedly, that discrimination based on nationality falls within the scope of the Convention[138].

48. General Recommendation No. XXX makes this clear. The UAE referenced this General Recommendation on Monday, but only to argue that Qatar failed to give weight to the "qualifying language" in paragraph 4[139]. In fact, the full quote of paragraph 4 makes clear that the CERD

---

[135] CR 2018/13, p. 26, para. 20 (Pellet).

[136] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 179, para. 109.

[137] *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, pp. 663-664, para. 66; emphasis added.

[138] See CERD Committee, General Recommendation No. XI on non-citizens, contained in UN doc. A/48/18 (1993); CERD Committee, General Recommendation No. XXX on discrimination against non-citizens, UN doc. CERD/C/64/Misc.11/rev.3 (2005), judges' folder, tab 11.

[139] CR 2020/6, p. 37, para. 43 (Bethlehem).

Committee explained that, under the CERD, "differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, *are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim*"[140]. The "qualifying language" as the UAE calls it, is a reference to the object and purpose of the Convention — "to eliminate racial discrimination *in all its forms*". The CERD Committee is thus unequivocal that it is competent to interrogate distinctions based on nationality to *ensure* that they do not constitute unlawful discrimination.

49. It is telling that the UAE's submissions on Monday neglect even to mention that the CERD Committee has assessed the scope of the Convention *specifically with respect to the UAE's measures*. At tab 2 of your judges' folder, you will find the CERD Committee's August 2019 decision on the admissibility of Qatar's communication against the UAE. The UAE made similar arguments before the CERD Committee that it raises before the Court, arguing that the CERD Committee had no competence because of "the absence of the term 'nationality' in the definition of racial discrimination prohibited by the Convention"[141].

50. In its decision, the CERD Committee concluded that Qatar's allegations of nationality-based discrimination

> "do not fall outside the scope of competence *ratione materiae* of the Committee. The Committee therefore rejects the preliminary exception raised by the United Arab Emirates relating to the absence of the term 'nationality' in the definition of racial discrimination prohibited by the Convention."[142]

51. The CERD Committee emphasized that including nationality-based discrimination within the scope of the Convention *does not per se* render illegal any State practice of giving favourable treatment to certain non-national groups or to citizens with respect to the array of rights that are protected under CERD. As Professor Klein has explained and the CERD Committee's

---

[140] CERD Committee, CERD Committee, General Recommendation No. XXX on discrimination against non-citizens, UN doc. CERD/C/64/Misc.11/rev.3 (2005), para. 4, emphasis added; judges' folder, tab 11.

[141] CERD Committee, "Decision on the admissibility of the inter-State communication submitted by Qatar against the United Arab Emirates", UN doc. CERD/C/99/4 (adopted 27 Aug. 2019), p. 13, para. 63, available at https://undocs.org/CERD/C/99/4.

[142] CERD Committee, "Decision on the admissibility of the inter-State communication submitted by Qatar against the United Arab Emirates", UN doc. CERD/C/99/4 (adopted 27 Aug. 2019), p. 13, para. 63, available at https://undocs.org/CERD/C/99/4.

interpretations and practice confirm, a distinction or preference does not give rise to unlawful *discrimination* so long as it is legitimate and proportional[143].

52. Thus, the UAE's threat that commonplace nationality-based *distinctions* would be nullified if the Court were to agree that the Convention prohibits nationality-based *discrimination* does not hold up. The UAE has chosen to tilt at windmills, but this risk has not materialized over the several decades in which the CERD Committee has considered discriminatory acts based on nationality as falling within its competence. Neither has it materialized in light of the interpretation and practice of other international human rights courts and bodies that have prohibited nationality-based discrimination under similar anti-discrimination provisions[144].

53. The CERD Committee's August 2019 decision is clear: the UAE's measures fall within the scope of the Convention. Qatar trusts the Court would accord "great weight" to the CERD Committee's authoritative interpretation of the Convention[145].

54. For all of these reasons, Qatar respectfully requests that the Court reject the UAE's first preliminary objection and conclude that it has jurisdiction *ratione materiae* over the dispute.

55. Mr. President, Madam Vice-President, distinguished Members of the Court, this concludes my observations before you. I thank you for your kind attention. May I ask that you invite Mr. Lawrence Martin to address you?

The PRESIDENT: I thank Ms Amirfar for her statement. I will now give the floor to Mr. Lawrence Martin. You have the floor.

---

[143] See MQ, pp. 82-85, 107-108, paras. 3.15-3.20, 3.57; WSQ, pp. 38-43, paras. 2.46-2.52; CERD Committee, *Habassi* v. *Denmark*, Communication No. 10/1997, Opinion, UN doc. CERD/C/54/D/10/1997 (6 Apr. 1999), para. 9.3; CERD Committee, *Adan* v. *Denmark*, Communication No. 43/2008, Opinion, UN doc. CERD/C/77/D/43/2008 (21 Sept. 2010), para. 7.5.

[144] See MQ, pp. 93-95, paras. 3.32-3.34; see also Human Rights Committee, *Karakurt* v. *Austria*, Communication No. 965/2000, UN doc. CCPR/C/74/D/965/2000 (4 Apr. 2002), para. 8.4.

[145] *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, pp. 663-664, para. 66.

Mr. MARTIN:

IV. THE SECOND PRELIMINARY OBJECTION SHOULD BE REJECTED

1. Mr. President, Madam Vice-President, distinguished Members of the Court, good afternoon — or good morning, or good evening, as the case may be. It is an honour to appear before you today, even if only by video, on behalf of the State of Qatar. It falls to me to explain why the Court should reject the UAE's second preliminary objection.

2. Before the UAE spoke on Monday, I was planning to explain why the UAE's third preliminary objection should also be rejected. As you heard from Sir Daniel, however, the UAE has dropped its abuse of rights claim[146]. I can therefore skip that now-abandoned argument.

3. But the UAE has maintained its second preliminary objection; namely, that Qatar supposedly did not fulfil the procedural preconditions stated in Article 22 of CERD. The argument Professor Forteau made, however, bore little — if any — resemblance to the argument the UAE made in its written pleadings. In its April 2019 preliminary objections, the UAE argued that Qatar had not satisfied the negotiation requirement and that, even if it had, it had not satisfied the other, cumulative requirement to exhaust procedures before the CERD Committee and Conciliation Commission.

4. We heard something different on Monday. No doubt chastened by the Court's November 2019 Judgment in *Ukraine* v. *Russia* that the preconditions under Article 22 are *alternative*, the UAE abandoned its prior argument that they are cumulative. It changed tack and argued that, having initiated the procedures expressly provided for in CERD, Qatar was obligated to see them through to conclusion before it could institute proceedings before the Court. Only very half-heartedly, did Professor Forteau argue also that Qatar had not even satisfied the negotiation requirement.

5. With your permission, Mr. President, I will take Professor Forteau's points in reverse order. *First*, I will show that Qatar did in fact satisfy the negotiation requirement. *Second*, I will show that on a plain reading of your Judgment in *Ukraine* v. *Russia*, that is all it was required to do. The facts that Qatar chose to re-refer its claims against the UAE after seising the Court and that

[146] CR 2020/6, p. 30, para. 15 (Bethlehem).

the proceedings before the Conciliation Commission have not concluded are entirely without consequence to your jurisdiction.

A. Qatar satisfied the negotiation requirement

6. Turning to the first point, as I said, on Monday, Professor Forteau made only the most perfunctory argument that Qatar did not satisfy the negotiation requirement. He said only that we are wrong to claim that Qatar tried in good faith to settle the dispute through negotiations[147]. He then quickly pointed you to the UAE's written submissions and moved on[148].

7. Professor Forteau's haste to change subjects is understandable. There is no serious question that Qatar made the good-faith attempt to negotiate that Article 22 requires. The UAE, together with the other respondents, made a similar argument in the civil aviation cases, but it is no more persuasive here than it was there. Qatar not only made a genuine attempt to negotiate with the UAE, with a view to resolving the dispute under CERD, it made many such attempts. Qatar's efforts are exhaustively detailed in our Memorial[149] and our Written Statement[150]. I will not take up your valuable time discussing those attempts this afternoon, other than to note that before Qatar seised the Court, indeed, until Monday, the UAE consistently made clear that it had no interest in negotiating with Qatar on any issues at any time. In the civil aviation cases, the Court itself took note of this fact, finding that "[s]enior officials of the Appellants [including, of course, the UAE] stated that they would not negotiate with Qatar"[151]. For today, I will focus on just one attempt Qatar made: its 25 April 2018 letter to the UAE inviting negotiations, a letter that was the culmination of all its prior efforts.

8. The April 2018 letter was sent by Qatar's Minister of State for Foreign Affairs to his UAE counterpart. There is no doubt about what it was, or what Qatar wanted. In fact, on Monday,

---

[147] CR 2020/6, p. 62, para. 25 (Forteau).

[148] CR 2020/6, p. 62, para. 25 (Forteau).

[149] MQ, Vol. I, paras. 3.166-3.191.

[150] WSQ, Vol. I, paras. 3.46-3.59.

[151] *Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates* v. *Qatar), Judgment of 14 July 2020*, para. 96; *Appeal Relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt and United Arab Emirates* v. *Qatar), Judgment of 14 July 2020*, para. 97.

Professor Forteau himself acknowledged that the letter expressly states that it was an invitation to negotiate about CERD[152].

9. The UAE does not dispute that it never responded to Qatar's letter in any manner before Qatar filed its Application instituting these proceedings. Nevertheless, on Monday, Professor Forteau persisted in arguing that Qatar had not made a genuine attempt to negotiate. But he did not suggest any reason why Qatar's letter, combined with the UAE's failure to respond, should not count as an attempt to negotiate. In the absence of any real argument, I do not think I need to belabour the point.

10. In any event, in a related context, counsel for the UAE effectively confirmed that a letter of this kind does, in fact, constitute a genuine effort to negotiate and that a failure to respond has consequences. Specifically, at the oral hearings in the civil aviation cases last December, *counsel for the UAE* made much of the fact that Qatar had allegedly never written a letter specifically inviting the UAE, Saudi Arabia, Bahrain or Egypt to negotiate directly over the respondents' aviation measures. States, the UAE's counsel said in the first round, must be given a choice as to whether to negotiate or not. He went on:

> "A State which receives a request for negotiations in respect of a dispute arising under a treaty containing such a compromissory clause, *will no doubt evaluate carefully whether or not to engage, in the knowledge that if it does not, the consequence is that the dispute can then be submitted to the stipulated forum*."[153]

11. There is more. In the second round, responding to my argument that an invitation does not need to be "wrapped in a bow and delivered on a golden platter", counsel for the UAE took pains to make clear that "compliance with the precondition would not have been difficult". According to counsel for the UAE:

> "*It would have sufficed for Qatar to have sent a letter to each of the Appellants in which it identified the alleged breaches of the Chicago Convention and/or IASTA, and requested negotiations in that regard*. Such a letter would not have needed to have been long, nor would it have been particularly complex to draft. Certainly, it would not have needed to have been wrapped up with a bow, or even served on a golden platter."[154]

---

[152] CR 2020/6, p. 64, para. 27 (Forteau).

[153] CR 2019/14, p. 25, para. 19 (Olleson); emphasis added.

[154] CR 2019/16, p. 42, para. 12 (Olleson); emphasis added.

12. That bears repeating: "It would have sufficed for Qatar to have sent a letter . . . in which it identified the alleged breaches . . . and requested negotiations in that regard." That is exactly what happened in this case. On the UAE's own argument, and to use its own words, the UAE "no doubt evaluate[d] carefully whether or not to engage, in the knowledge that if it did not, the consequence [would be] that the dispute [could] be submitted to the stipulated forum".

13. The conclusion that Qatar satisfied the negotiation requirement thus follows ineluctably from the UAE's own arguments in the civil aviation cases. If a letter inviting negotiations "would have sufficed" in that case, it does suffice in this case. Qatar unmistakably satisfied the negotiation requirement.

B. Qatar was not required to wait until the CERD procedures are over

14. That brings me to my second point. Perhaps knowing that the UAE's argument about the negotiation requirement is so weak, Professor Forteau focused most of his time and effort on Monday arguing that, having commenced the CERD procedures, Qatar was required to wait until those proceedings were over before seising the Court.

15. As I said, this is a significant change of course by the UAE. This was not the focus of its second preliminary objection in its written pleadings. Nor did the UAE give it much weight during the first provisional measures hearing. Before Monday, the UAE's argument was that Article 22 creates cumulative preconditions: that both negotiations *and* the procedures expressly provided for in CERD must be pursued as far as possible before a State may have recourse to the Court. But, of course, the Court rejected just that argument last year in *Ukraine* v. *Russia*, in which it held that "Article 22 of CERD imposes *alternative* preconditions to the Court's jurisdiction"[155].

16. Professor Forteau argued that the Court's decision in *Ukraine* v. *Russia* "is without effect" in this case[156] because, unlike Ukraine, Qatar initiated the CERD procedures before submitting its Application to the Court. The Court's decision, however, is as fatal to the UAE's new argument as it is to its old argument.

---

[155] *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), Preliminary Objections, Judgment of 8 November 2019*, para. 113; emphasis added.

[156] CR 2020/6, p. 62, para. 26 (Forteau).

17. Indeed, the UAE's argument stumbles over a very basic hurdle: the meaning of "alternative". "Alternative" means one or the other; one of two or more available possibilities. When the Court held that Article 22 imposes "alternative" preconditions it can only have meant that it is enough for an Applicant to have fulfilled either one of the two preconditions before seising the Court. Qatar plainly did that here for the reasons I have explained.

18. Professor Forteau read a preclusive element in these alternative preconditions. He said — and I will paraphrase in English so as not to embarrass myself — that since Qatar

> "took the initiative of submitting the dispute settlement to the procedures expressly provided for in the Convention, it was not possible for it to refer the matter to the Court before it was possible to determine whether or not those procedures had resulted in a settlement of the dispute between the Parties"[157].

Committing Qatar to these procedures, according to Professor Forteau, follows from the text of Article 22, but his argument in that respect was conspicuously vague. We have read his speech carefully but cannot find any place in which he clearly and methodically analyses the text and makes clear why it supports the UAE's desired reading.

19. Instead of identifying anything in the actual text of Article 22, Professor Forteau pointed to a number of extraneous principles and doctrines from which he said the UAE's reading can be "implied", including good faith[158], *lis pendens*[159] and *electa una via*[160]. But there is no need to resort to such extraneous principles or doctrines to find implications. The Court's holding in *Ukraine* v. *Russia* is clear and unambiguous. "Alternative" means "alternative"; it does not mean "but also maybe sometimes cumulative depending on the circumstances". Nor does it mean "mutually exclusive".

20. In any event, even taken on their own terms, the UAE's efforts to invoke good faith, *lis pendens* and *electa una via* were also singularly inapposite and unpersuasive. The Court does not need to be reminded that the principle of good faith is not an independent source of obligation

---

[157] CR 2020/6, p. 54, para. 3 (Forteau); see also *ibid.*, pp. 57-58, para. 11.

[158] CR 2020/6, p. 63, para. 26 *(c)* (Forteau).

[159] CR 2020/6, pp. 60-61, paras. 19-20 (Forteau).

[160] CR 2020/6, p. 60, para. 19 (Forteau).

under international law; it merely conditions the exercise of existing rights and duties[161]. Here, the UAE has not pointed to the existence of any such right or duty in Article 22.

21. The UAE's invocation of *lis pendens* and *electa una via* is even more curious. In the first hearing on provisional measures, the UAE specifically invoked *lis pendens* and *electa una via* to challenge the Court's jurisdiction[162]. Then, in its written pleading, it dropped them. On Monday, they seemed to re-emerge — but then not really. Sir Daniel made clear that the UAE was not making a *lis pendens* or *electa una via* argument[163]. Professor Forteau said the same thing[164], but then nevertheless argued that they support the UAE's interpretation of Article 22[165].

22. We disagree. As Qatar made clear in its Memorial, neither *lis pendens* nor *electa una via* find any meaningful support in the international case law in the absence of express treaty language. Article 22 contains no such language. All it says is that if the dispute is not settled by negotiation *or* by recourse to the CERD procedures, an applicant State may go to Court. There is nothing about this language that even hints in the direction of an implicit bar on parallel proceedings.

23. Professor Forteau also curiously invoked Article IV of the Pact of Bogotá, which, he said, imposes the same substantive rule as Article 22; namely, that only disputes which have not been settled by recourse to other means may be submitted to the Court[166]. He said this even as he admitted that the two provisions "are not drafted in the same way"[167].

24. That, to be frank, is putting it mildly. In fact, the wording of the two provisions could scarcely be less similar. Article IV of the Pact of Bogotá is a perfect example of treaty language expressly providing for the application of the *electa una via* principle. It states:

---

[161] *Border and Transborder Armed Actions (Nicaragua* v. *Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 105, para. 94; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 297, para. 39.

[162] CR 2018/13, p. 27, para. 23 (Pellet).

[163] CR 2020/6, p. 34, para. 31 (Bethlehem).

[164] CR 2020/6, p. 60, para. 19 (Forteau).

[165] CR 2020/6, p. 60, para. 19 (Forteau).

[166] CR 2020/6, pp. 64-65, para. 28 (Forteau).

[167] CR 2020/6, pp. 64-65, para. 28 (Forteau).

> "Once any pacific procedure has been initiated, whether by agreement between the parties or in fulfillment of the present Treaty or a previous pact, *no other procedure may be commenced until that procedure is concluded*."[168]

25. The yawning chasm between this language and the text of Article 22 only serves to underscore that Article 22 does *not* mean what the UAE would like it to. Article IV of the Pact shows that when the drafters of a treaty want to preclude concurrent proceedings, they know how to do it. The drafters of CERD did no such thing.

26. The UAE's argument about the alleged impermissibility of parallel proceedings before the Court and the Conciliation Commission faces another very basic obstacle. The Court and its predecessor have regularly entertained cases where the parties were — as here — simultaneously pursuing other, consensual means of dispute settlement[169]. In the *Hostages* case, for example, the Court found that the establishment of a "fact-finding mission" created as "an organ or instrument for mediation, conciliation or negotiation to provide a means of easing the situation of crisis existing between the two countries" could not "be considered in itself as in any way incompatible with the continuance of parallel proceedings before the Court"[170]. In reaching this conclusion, the Court observed that "[n]egotiation, enquiry, mediation, conciliation, arbitration and judicial settlement are enumerated together in Article 33 of the Charter as means for the peaceful settlement of disputes"[171].

27. This is not a new point. We made it both in our Memorial[172] and our written observations on the UAE's preliminary objections[173]. We did not hear any response from the UAE on Monday. Perhaps they know their position on Article 22 is inconsistent with this long, unbroken line of jurisprudence.

---

[168] American Treaty on Pacific Settlement (concluded 30 April 1948, entered into force 6 May 1949), 30 *UNTS* 55, Art. IV; emphasis added.

[169] See e.g. *United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran), Judgment, I.C.J. Reports 1980*, p. 23, para. 43; *Land and Maritime Boundary (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 307, para. 68; *Passage through the Great Belt (Finland* v. *Denmark), Provisional Measures, Order of 29 July 1991, I.C.J. Reports 1991*, p. 20, para. 35; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 440, para. 108; *Aegean Sea Continental Shelf (Greece* v. *Turkey), Judgment, I.C.J. Reports 1978*, p. 12, para. 29; *Free Zones of Upper Savoy and the District of Gex, Judgment, 1932, P.C.I.J., Series A/B, No. 46*, p. 101.

[170] *United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran), Judgment, I.C.J. Reports 1980*, p. 23, para. 43.

[171] *United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran), Judgment, I.C.J. Reports 1980*, p. 23, para. 43.

[172] MQ, Vol. I, para. 4.79.

[173] WSQ, Vol. I, para. 4.6.

28. Instead of addressing this point, the UAE offered some ruminations on the judicial settlement of international disputes being a substitute for the direct and amicable settlement of such disputes between the Parties[174]. While true, these observations add nothing to the analysis. The point is that the Court has long welcomed two forms of dispute settlement running contemporaneously, side-by-side.

29. We also heard much Monday from various speakers about the UAE's commitment to the conciliation process and its hope that it will yield a positive result. Qatar, of course, welcomes this recently discovered spirit of co-operation. We cannot help but note, however, that the apparent position adopted by the UAE on Monday is irrelevant to the Court's assessment of the situation in June 2018. It also represents a dramatic about-face.

30. Before the UAE's recent change of heart, its communications with the CERD Committee were distinctly *un*co-operative. In a 17 September 2019 Note Verbale to the CERD Committee, for example, the UAE expressed its disagreement with the Committee's decision on jurisdiction and admissibility, saying: "The UAE regrets to state that its view is the Committee has acted *ultra vires* in deciding to establish an ad hoc Conciliation Commission. The UAE has significant concerns with the Committee's legal analysis and conclusions."[175] In the same letter, the UAE attempted to subvert the Committee's authority by requesting "a meeting with the Committee's Chair, the Secretary of the Committee, and the Assistant Secretary-General for Legal Affairs of the United Nations"[176], and further requesting "that any further action in this regard is delayed"[177].

31. The UAE elaborated on its view in an attachment to that letter, stating that it "is convinced that the Committee has made a fundamental error of law concerning the subject matter jurisdiction of the Convention, which underpins the power of the Committee to establish an ad hoc Conciliation Commission"[178]. Interestingly, the UAE itself then made a point of underscoring the different character of the CERD procedures and these proceedings before the Court, stating: "The Committee and ICJ have related but fundamentally distinct roles relating to resolving disputes

---

[174] CR 2020/6, pp. 58-59, para. 15 (Forteau).

[175] Note Verbale of the United Arab Emirates, 17 Sept. 2019, p. 1; judges' folder, tab 12.

[176] Note Verbale of the United Arab Emirates, 17 Sept. 2019, p. 1; judges' folder, tab 12.

[177] Note Verbale of the United Arab Emirates, 17 Sept. 2019, p. 2; judges' folder, tab 12.

[178] Note Verbale of the United Arab Emirates, 17 Sept. 2019, p. 1; judges' folder, tab 12.

between States parties to the Convention. The Committee's role is conciliatory and recommendatory, while the ICJ's role is legal and binding."[179] I forgot to say, Mr. President, that those documents are attached at tab 12 to your judges' folder.

32. Qatar entirely agrees with this latter observation, which only goes to show precisely why there is nothing at all incompatible about pursuing the two procedures in parallel.

33. Mr. President, Madam Vice-President, distinguished Members of the Court, thank you for your customary courtesy and your kind attention. May I ask that you invite Professor Schrijver to address you next.

The PRESIDENT: I thank Mr. Martin for his presentation. I now give the floor to Professor Nico Schrijver. You have the floor.

Mr. SCHRIJVER:

V. THE PATHWAY TO THE MERITS

1. Mr. President, distinguished Members of the Court, it is a great honour and privilege to appear before you on behalf of the State of Qatar.

2. The legal dispute before the Court touches upon matters of principle of the utmost importance to the international legal order. It emanates from serious violations of one of the earliest global human rights treaties of the United Nations era. Its goal is as compelling today as it was when the Convention was concluded in the 1960s.

3. Qatar submits that the UAE's measures have had and are continuing to have a devastating impact on Qataris and their families, undermining the rights and obligations contained in Articles 2, 4, 5, 6 and 7. The facts, by now familiar to the Court, demonstrate that — I quote from the opening words of the Convention — "the principles of the dignity and equality inherent in all human beings" have been flagrantly violated by the UAE[180].

4. Qatar's pleadings, including the presentations of my colleagues today, demonstrate that the UAE's preliminary objections cannot succeed. Rather, the UAE's arguments signpost a clear

---

[179] Note Verbale of the United Arab Emirates, 17 Sept. 2019, p. 2; judges' folder, tab 12.

[180] MQ, Vol. III, Ann. 92, CERD, preamble.

path forward for the Court's consideration of the UAE's conduct at the merits phase of these proceedings. In the first part of my presentation, I will identify for the Court the three markers along that path. I will then address the consequences of the UAE's arguments for the effectiveness of the Convention's obligations and the CERD Committee's critical role in upholding them.

A. The Court should proceed to the merits

5. I turn to the UAE's first preliminary objection relating to the question of the substantive scope of the Convention[181]. As the Court made clear in *Ukraine* v. *Russian Federation*, the *only* relevant question before the Court at this stage of the proceedings is whether the measures of which Qatar complains are "capable of having an adverse effect on the enjoyment of certain rights protected under [the Convention]"[182]. The answer is clearly yes.

6. The *first* marker on the path to the merits phase is that Article 1 (1) of the Convention prohibits discrimination based on present nationality. And as explained by my colleagues Professor Klein and Ms Amirfar, "national origin" in Article 1 (1) is properly interpreted as encompassing present nationality. This alone is a sufficient basis for the Court to move to the merits.

7. However, whether or not the UAE *did and does* target Qataris solely on the basis of their nationality — the point on which the UAE premises its first preliminary objection — is clearly dependent upon the facts of the case and evidence to be addressed as part of the merits. So, too, whether that targeting is akin to legitimate and proportionate immigration controls or prohibited racial discrimination[183]. The conclusions of the UAE's counsel this week that these questions are strictly ones of legal interpretation of an "exclusively preliminary character" are simply unsustainable[184].

---

[181] CR 2020/6, p. 41, para. 11 (Sheeran).

[182] *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), Preliminary Objections, Judgment of 8 November 2019*, para. 96. 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), Preliminary Objections, Judgment of 8 November 2019*, separate opinion of Judge Donoghue, para. 10.

[183] E.g. CR 2020/6, p. 36, para. 40 (Bethlehem); CR 2020/6, pp. 23-24, paras. 11-12 (Al Bastaki).

[184] CR 2020/6, p. 26, para. 2, p. 31, para. 18 (Bethlehem).

8. The *second* marker is the fact that, *even* if employing the UAE's narrow definition of "national origin" as excluding present nationality, the UAE's measures discriminated against Qataris on the basis of their national origin in both design and impact. As Ms Amirfar explained, a measure can be, and often is, "based on" a protected ground even if on its face it targets a different characteristic. On Monday, the UAE submitted, through its representatives, that the measures "were not addressed to anyone other than Qatari nationals and did not affect anyone because of their 'race, colour, descent, or national or ethnic origin'"[185]. With all due respect, the UAE's evidence must be tested. To whom the measures were "addressed" is *not* the question; the question is whether they were "based on" — in the sense of directly implicating — a protected group either expressly or in fact. The Court *must* therefore look behind the UAE's description of its measures to determine their true nature and impact. This determination is not ~~a~~ "jurisdictional overreach by Qatar", as Sir Daniel suggested[186]. Rather it concerns, as the Court itself ***explained*** in *Ukraine* v. *Russian Federation*, "issues of fact, largely depending on evidence regarding the purpose or effect of the measures alleged" and therefore "properly a matter for the merits"[187].

9. Yet, the UAE is asking the Court to make a definitive decision, at this stage of the proceedings, that Convention obligations *are incapable of being engaged in any way* where a measure is based, at least nominally, upon nationality. That misconceives both the scope of the Convention and the questions before the Court in deciding its jurisdiction *ratione materiae*.

10. Further, as submitted for the very first time this past Monday, the UAE now disputes the existence of a distinct Qatari national origin in the historical and cultural sense[188] or the fact that its measures directly implicate persons of such Qatari origin[189]. To the extent that the UAE insists on these characterizations, the UAE's first objection loses its exclusively preliminary character. These questions are, to use the words of the Court in its Judgment in *Certain Iranian Assets*, "largely of a

---

[185] CR 2020/6, p. 29, para. 10 (Bethlehem).

[186] CR 2020/6, p. 33, para. 26 (Bethlehem).

[187] *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), Preliminary Objections, Judgment of 8 November 2019*, para. 94. See also *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, para. 51.

[188] CR 2020/6, p. 17, para. 4 (AlNaqbi); CR 2020/6, pp. 21-22, paras. 4-7 (Al Bastaki).

[189] CR 2020/6, pp. 22-***26***, paras. 8-***20*** (Al Bastaki).

factual nature and are, moreover, closely linked to the merits of the case"[190]. Nor does the Court have before it the necessary "elements" to resolve these questions at this stage[191]. Thus, if the Court were inclined to consider them as a jurisdictional matter, they should be joined to the merits.

11. Turning now to the UAE's second preliminary objection, the *third* marker on the pathway to the merits is that the preconditions to the Court's jurisdiction under Article 22 pose no bar to the Court hearing the merits of Qatar's claims. The Court itself has determined that the preconditions are alternative[192] — a term that the UAE should take cognizance of — and there can be no doubt that Qatar has satisfied the precondition of negotiation as my colleague Mr. Martin has just demonstrated.

12. Mr. President, the UAE is simply trying to obfuscate the issue: first *refusing* to negotiate and then relying on a requirement to negotiate as a bar to jurisdiction; objecting to the jurisdiction and authority of the CERD Committee, including asking the Court to overturn the Committee's decision on the scope of the Convention, but then arguing that Qatar must finish the Articles 11-13 process; telling the Court it is willing to engage with Qatar to achieve the aims of the Convention, but then arguing that ***parties***' access to the Court should be substantially delayed, contrary to the Court's assessment of the Convention's object and purpose "to eradicate all forms of racial discrimination effectively and promptly"[193]. Mr. President, whose views have been waxing and waning, to paraphrase Sir Daniel?[194]

13. In short, these three markers chart a clear path to the merits phase of Qatar's case.

14. As a final note to the first part of my presentation, it is worth recalling that the UAE's violations continue to this day — including of the Court's July 2018 provisional measures Order.

---

[190] *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019*, para. 97; see also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, pp. 61-62, paras. 128-130; Rules of Court, Art. 79*ter*, para. 4.

[191] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, p. 61, paras. 129-130.

[192] *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), Preliminary Objections, Judgment of 8 November 2019*, para. 112.

[193] *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), Preliminary Objections, Judgment of 8 November 2019*, para. 111.

[194] CR 2020/6, p. 37, para. 44 (Bethlehem).

As Qatar has explained in its written submissions, whatever the Court's decision on the UAE's preliminary objections, the Court retains jurisdiction to decide whether or not the UAE has complied with the Court's Order[195].

B. The UAE's interpretation would undermine the Convention and the CERD Committee

15. Mr. President, Members of the Court, the specific facts of Qatar's case make clear that each of the UAE's preliminary objections must be rejected. But more broadly, the UAE's proposed view of the Convention, if adopted, is one that would have serious consequences for the Convention's effectiveness.

16. The drafters of the Convention intended to create broad and tangible protections against an evil with many manifestations. Therefore, they recognized that the Convention must be designed, in the words of one delegate, to have "maximum practical effectiveness and universal scope"[196]. The drafters' vision is operationalized not only in the Convention's substantive obligations, but also in the creation of the CERD Committee: an independent body of experts charged with broad oversight and interpretive functions[197] and serving — in the words of our colleagues on the other side — as the "guardian" of the Convention[198].

17. The CERD Committee has faithfully fulfilled this role. For over half a century, it has supervised the application of the Convention, generating an extensive body of work that has guided States in their understanding and implementation of their obligations. As the earliest human rights treaty body, the CERD Committee has also played an important role in the development of international human rights law more broadly.

18. The UAE has attempted to diminish the authority of the work of the CERD Committee[199]. But such efforts fail to undermine the Committee's decades of significance in the fight against racial discrimination. The CERD Committee's views, as an organ within the

---

[195] See MQ, Chap. VI.

[196] *UNGAOR, Twentieth Session, Third Committee*, doc. A/C.3/SR.1311 (20 Oct. 1965), p. 112, para. 15.

[197] See e.g. MQ, Vol. III, Ann. 92: CERD, Arts. 9, 11, 12, 14.

[198] CR 2018/13, p. 26, para. 20 (Pellet).

[199] See POUAE, p. 71, para. 130.

United Nations system, should be given particular weight by the Court, as another United Nations organ, in order to maintain and further develop and strengthen the coherence of that system.

19. Mr. President, it is no overstatement to say that the consequence of granting the UAE's request to discard the CERD Committee's interpretation***s*** and practice — including with respect to the very measures here under review — would distort the "clarity" and "legal security" that the Court itself has recognized as central concerns when it has considered the work of the Human Rights Committee[200]. It would undermine not only the CERD Committee's role, but also more generally the crucial role of independent expert treaty bodies within the global human rights architecture.

20. Of course, the Court does not substitute the CERD Committee's judgment for its own, and Qatar has not suggested it should. But the Court should give careful consideration — "great weight", in the Court's own words — to the interpretation of a ***c***ommittee that has for half a century acted to safeguard the effectiveness of the Convention's obligations in combating racial discrimination. This careful consideration should extend to the CERD Committee's decision of 27 August 2019 on jurisdiction and on the admissibility of Qatar's claims.

21. Similarly, accepting the UAE's inflated interpretation of Article 22's precondition requirements, which far exceeds the standard set out in the Court's jurisprudence[201], would ignore the Court's essential role in this framework and, as a practical matter, could close the doors of the Court to parties with justiciable disputes under the Convention.

22. The consequence of the UAE's arguments is thus a world in which the Convention's norms and obligations are rigidly narrow, the important and careful work of the oldest United Nations human rights treaty body is subverted if inconvenient, and the Court's role in giving effect to the Convention's object and purpose is unjustifiably curtailed.

23. Qatar respectfully suggests that this simply cannot be reconciled with the central premise of the Convention. The UAE cannot escape its obligations under the Convention so easily.

---

[200] *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, pp. 663-664, para. 66.

[201] 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), Preliminary Objections, Judgment of 8 November 2019*, paras. 106-113.

C. Conclusion

24. Mr. President, Members of the Court, Qatar's claims clearly concern a dispute over the interpretation or application of the Convention. There is no need for the Court to go further to determine, at this stage, that the UAE's measures *actually* constitut***e r***acial discriminatio***n w***ithin the meaning of Article 1 (1); nor is the Court at this stage required to, in its own words, "establish whether, and, if so, to what extent, certain acts may be covered by Article 1, paragraphs 2 and 3" of the Convention[202]. The Court only need take account of Qatar's allegations that a group defined b***y n***ational origi***n h***as been implicated in this case, as well as that group's "broadly formulated rights and obligations" — contained in Articles 2 and 5, and further in Articles 4, 6 and 7 — to find that the UAE's measures fall within the scope of the Convention[203].

25. Likewise, the UAE's second preliminary objection contradicts the Court's already clear interpretation of Article 22. It should be rejected. This is the only result that will preserve the object and purpose of the Convention.

26. Mr. President, Madam Vice-President, Members of the Court, this concludes Qatar's first round of oral submissions. Kindly allow me, on behalf of our delegation, to wish all of you and your families well in these challenging times and so, too, our colleagues on the other side. I thank the Court for its kind attention, as well as the Registry staff and the interpreters for all their support.

The PRESIDENT: I thank Professor Schrijver. Your statement brings to an end today's sitting. Oral argument on the preliminary objections raised by the United Arab Emirates will resume on Friday 4 September 2020 at 3 p.m. so that the United Arab Emirates' second round of pleadings can be heard. At the end of that sitting, the United Arab Emirates will present its final submissions. Qatar will present its second round of oral argument on Monday 7 September 2020 at 3 p.m. At the end of that sitting, Qatar will also present its final submissions. Each Party will have a maximum of one hour and a half to present its arguments for the second round.

---

[202] *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), Preliminary Objections, Judgment of 8 November 2019*, para. 94.

[203] *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), Preliminary Objections, Judgment of 8 November 2019*, para. 96.

I would like to recall that in accordance with Article 60, paragraph 1, of the Rules of the Court, the oral statements of the second round are to be as succinct as possible. The purpose of the second round is to enable each of the Parties to reply to the arguments put forward orally by the opposing Party. The second round must therefore not be a repetition of the statements already set forth by the Parties, which, moreover, are not obliged to use all the time allotted to them. The sitting is adjourned.

The Court rose at 5.50 p.m.

_____