Corrigé
Corrected

CR 2020/8

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2020

Public sitting

held on Friday 4 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 vendredi 4 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: Please be seated. The sitting is open. The Court meets this afternoon to hear the second round of oral argument of the United Arab Emirates on its preliminary objections. I would like to recall that in view of the current COVID-19 pandemic, the Court has opted for a hybrid hearing. Therefore the following judges are present with me in the Great Hall of Justice: Vice-President Xue, Judges Tomka, Abraham, Bennouna, Sebutinde, Gevorgian, Salam and Iwasawa; while Judges Cançado Trindade, Donoghue, Gaja, Bhandari, Robinson and Crawford, as well as Judges *ad hoc* Cot and Daudet, are present via video link. I shall now give the floor to the first speaker for the United Arab Emirates, Sir Daniel Bethlehem. You have the floor.

Sir Daniel BETHLEHEM:

THE UAE'S REPLY — GENERAL OBSERVATIONS

I. Opening remarks

1. Good afternoon, Mr. President, Madam Vice-President and Members of the Court. It falls to me to open the UAE's reply. I will be followed by Dr. Sheeran and Professor Forteau. Ambassador AlNaqbi will conclude the UAE's legal case, followed by the Agent of the UAE, who will read the UAE's final submissions.

2. Mr. President, I propose to group my observations under three headings: *first*, some general observations; *second*, some brief comments on the issue of nationality versus national origin; and, *third*, the UAE's engagement with the Geneva procedures.

II. General observations

3. I turn to some general observations ~~***and***~~ I have four points to make.

4. First, we were struck on Wednesday by the fact that Qatar made no suggestion that the dispute before the Court and the dispute before the Geneva institutions are different disputes. Professor Lowe had made a good deal of this in the second provisional measures hearing. But, just as the UAE has reflected since then, it appears that Qatar has done as well. And apart from a passing observation by Mr. Martin, Qatar now appears to accept that the dispute in the two sets of proceedings is materially identical.

5. Mr. Martin, perhaps hoping to keep the point on life support, made a last gasp in his closing moments when he cited the UAE's recognition that the Geneva and the Court procedures are different. Of course, the procedures are different — but the dispute is the same. Same dispute. Same Convention. Same Parties. And with Article 22 laying down deconfliction rules that apply exactly in the current circumstances.

6. Second, we heard a good deal from Professor Klein invoking the European Convention on Human Rights (ECHR), the Inter-American Convention, the African Charter, and the ICCPR, as well as repeated invocations of general principles of non-discrimination. As I observed on Monday, the CERD compromissory clause does not open the door to claims of discrimination that are untethered from the Convention. And, as regards the general human rights instruments, to none of which the UAE is a party, each one is drafted in open-textured terms. Article 14 (1) of the ECHR, for example, stating that the enjoyment of the rights and freedoms set forth in that Convention "shall be secured without discrimination on any ground, such as . . .", and there follows a list of illustrative categories. Article 2 (1) of the ICCPR is similarly drafted. Not so the CERD, which contains a tight definition of its subject-matter reach. It is not necessary for us to take issue with Qatar's less than perfect reading of the jurisprudence under these instruments. It is simply inapposite as a matter of general proposition.

7. Third, Mr. President, Members of the Court, let me attempt to put my arms around an issue that Qatar has in fact made a pivot of its case.

8. Ms Amirfar began her submissions on Wednesday with what she described as an overarching point about the necessary implications of the UAE's first preliminary objection. The UAE, she said, "fann[ed] the flames of hatred of an entire people . . . singl[ing] out Qataris as a group and subject[ing] them to differential treatment"[1]. **"**Yet**"**, she continued, the UAE "asks the Court to determine conclusively at a preliminary objections stage that the Court lacks jurisdiction to even consider its actions"[2]. "If the UAE is right", she went on, "a State could avoid its obligations under the Convention simply by casting its measures as nationality measures . . . This

[1] CR 2020/7, p. 34, para. 2 (Amirfar).

[2] CR 2020/7, p. 34, para. 2 (Amirfar).

cannot" — she says — "have been the intent of the drafters who sought to eliminate 'all forms' of racial discrimination."[3]

9. There is so much with which to take issue in this contention. It assumes what it is required to prove. It essentially asks for a pass on the law — that the Court should not decide the issue at this preliminary stage notwithstanding that due process requires it. It mischaracterizes the issue for determination in these proceedings. The UAE contention is that "nationality" is not a protected class under the CERD, but this is the way that Qatar has put its case. Qatar's claims, even if at times masquerading under the guise of "national origin", are self-evidently predicated on nationality. And there are proper limits on the judicial function when the claim pursued lies outside of the scope of the treaty whose compromissory clause is invoked.

10. Ms Amirfar's point also suggests that the UAE's case is that disguised discrimination, against a CERD protected group, under the guise of nationality measures, falls outside the scope of the CERD. But that is *not* our case. Disguised discrimination would come within the scope of the CERD. Our case, however, is that there is no discrimination, whether open or disguised, direct or indirect, *against a CERD protected group*.

11. Ms Amirfar's point, lightly stated but looming large, now effectively at the heart of Qatar's case, is simply that the Court cannot let the UAE get away with it. That you must hold the UAE to account. That you must at least consider the UAE's actions in a merits proceeding. As Professor Schrijver did more expressly, this is a plea about joinder to the merits.

12. In his submission, Professor Schrijver identified what he described as three markers on the pathway to the merits[4]. In effect, he was simply repackaging the arguments that had already been advanced with the addition of the refrain either that the UAE's evidence on nationality must be tested or that Article 22 poses no bar to hearing Qatar's merits claims[5]. The Article 22 point has no substance. Qatar accepts that jurisdiction falls to be determined as of the date of seisin of the Court — on 11 June 2018. There is nothing more for the Court to hear from the Parties on the issue of Article 22 beyond what is said in these proceedings.

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[3] CR 2020/7, p. 34, para. 2 (Amirfar).

[4] CR 2020/7, p. 59, para. 4 (Schrijver).

[5] CR 2020/7, p. 60, para. 8 and p. 61, para. 11 (Schrijver).

13. On the issue of nationality, Professor Schrijver invoked *Ukraine* v. *Russia* and *Certain Iranian Assets* in support of Qatar's case to suggest that it turns on fact and effect and evidence[6]. But that is *not* the case. The issue is not whether Qatar can find an example here or there on which to shine a light and say "here is a specific case, how are you supposed to decide the issue of whether there was in fact an effect unless you test the evidence".

14. To be clear, our contention is *not* that you must presumptively dismiss Qatar's case *on the evidence*. Qatar ignores a step in the process. Our case is that the *subject-matter* of Qatar's case is one of nationality, and that, in keeping with the Court's long-settled jurisprudence, this falls to be determined by reference to the material before the Court. It is not a question of the evidence still to come. It is a question of the real issue in dispute; what is the case that Qatar has brought? You do not need more than is already before you to address this issue. And, as I said on Monday, the issue of nationality cannot be avoided. It was clearly in the frame; indeed, even in the first provisional measures phase of the case.

The PRESIDENT: Sir Daniel Bethlehem, I am sorry to interrupt you, but there is a background noise which is caused apparently by the microphone being too close to you. So, if you could you kindly adjust your microphone and move a little bit away from it.

Sir Daniel BETHLEHEM: I will see what I can do, Mr. President. If you just give me one moment.

The PRESIDENT: Thank you.

Sir Daniel BETHLEHEM: Let me just check, Mr. President, whether that is clear enough for the interpreters before I continue.

The PRESIDENT: No. Unfortunately, the noise is still there.

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[6] CR 2020/7, pp. 59-61, paras. 5-10 (Schrijver).

Sir Daniel BETHLEHEM: Mr. President, I don't think that there is anything that I can do. It does not seem to be a noise on my end. I have adjusted the microphone, and there is no extraneous noise from where I am speaking.

The PRESIDENT: It is better. I am told that it is better now. It is fine. You may go ahead.

Sir Daniel BETHLEHEM: Thank you very much, Mr. President. I will continue. Let me just identify where I was.

15. Mr. President, Members of the Court, there is a wider point about Qatar's arguments tilting at joinder. It is that both Parties are fully committed to another process to address the issues. A finding by the Court of a lack of jurisdiction ***would*** not consign the dispute to the shadows. On the contrary, it would energize the Parties to address it on an equal footing before the Conciliation Commission. It would hold Qatar to the commitment expressed by its Agent on Wednesday that it "[would] not spare any effort to resolve the dispute"[7].

III. Nationality versus national origin

16. Mr. President, Members of the Court, I turn to my second topic, that of nationality versus national origin. I have five points to make.

17. First, counsel opposite suggested that we had failed to give content to the term "national origin", independent of nationality. I will try to assist. Nationality flows from law. National origin flows from heritage. Were Qatari law to promulgate that all persons of Qatari heritage are Qatari nationals, that would not make Qatari nationality synonymous with Qatari national origin. It may go some way towards aligning the constituencies of the two groups, but it would not make their determining characteristics the same.

18. In this regard, I note that, in its General Recommendation XXIV, the CERD Committee addressed the fact that "a number of States parties recognize the presence on their territory of some national or ethnic groups or indigenous peoples"[8]. It went on to note that "[s]ome States parties fail

[7] CR 2020/7, p. 16, para. 16 (Al-Khulaifi).

[8] Committee on the Elimination of Racial Discrimination, General recommendation XXIV concerning Article 1 of the Convention (1999), UN doc. A/54/18, Ann. V, para. 2.

to collect data on the ethnic or national origin *of their citizens*"[9]. This is the intended meaning of national origin — it is a subset of the individuals who have the nationality of that State. It is *not* the other way around. The historical and cultural homogeneity of Qatari nationals cannot drive the interpretation and application of a multilateral convention.

19. Second, turning to Qatar's case on interpretation, counsel for Qatar prayed in aid of its case the textual and contextual interpretation of the term "national origin" and its *travaux préparatoires*. In our first-round submissions, I cited to our written pleadings, where the arguments raised by Qatar on Wednesday are addressed at length. I do so again[10]. There was nothing new in what we heard from Qatar on these issues. Professor Klein suggested that Article 1 (2) is an exclusion from Article 1 (1), and by default, therefore, affirms that the Article 1 (1) definition of racial discrimination includes nationality more generally[11].

20. This, however, is a pretty strained reading of the Convention**,** and one that does not comport with its words. Article 1 (2) is a "for the avoidance of doubt" clause, making it clear that the Convention does not apply in the circumstances addressed. It addresses the scope of application of the Convention. The words "This Convention shall not apply . . ." are clear. Had this paragraph been intended to carry the meaning that Professor Klein proposed, both paragraph (1) and paragraph (2) would have been differently drafted. It would have been a simple matter to have included the word "nationality" within the scope of the Convention, had this been the intention. That the definition of "racial discrimination" omitted any reference to nationality is controlling.

21. Third, on what Ms Amirfar termed a "compromise amendment", for all the careful precision of her submissions, she was, with respect, economical with her accuracy of the historical record. I take but one example. She said that the United States and French proposals on nationality were "defeated", placing emphasis on this word in her speech[12]. But this is simply inaccurate. France and the United States *withdrew* the amendment in favour of the revised text that was

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[9] Committee on the Elimination of Racial Discrimination, General recommendation XXIV concerning Article 1 of the Convention (1999), UN doc. A/54/18, Ann. V, para. 2; emphasis added.

[10] POUAE, generally at paras. 70-138; Arts. 1 (2) and (3) are addressed at paras. 80-81.

[11] CR 2020/7, pp. 29-30, paras. 26-28 (Klein).

[12] CR 2020/7, p. 36, para. 11 (Amirfar).

ultimately adopted[13]. It was not a "compromise text". The French and United States amendment was *not* defeated. And, significantly, the French representative, when indicating the withdrawal of the proposals, said that the revised text of Article 1 was "entirely acceptable to his delegation and to that of the United States of America which therefore withdrew their own amendments"[14]. Mr. President, Members of the Court, the only construction that can be placed on this explanation is that France and the United States were fully content that the new language addressed their concerns about nationality. The opposite interpretation, advanced by Qatar, is simply not tenable[15]. Mr. President, Members of the Court, we invite the Court to test closely Qatar's recourse to the historical record.

22. Fourth, Qatar invoked the practice of the CERD Committee and said that it should be accorded "great weight"[16]. By "practice", Qatar was embracing both the Committee's General Recommendations and its Decision on Jurisdiction in this case.

23. On the general proposition, the UAE observes that the Court has never simply blessed an interpretation of law or its application to the facts arrived at by a treaty-monitoring body. It is commonly acknowledged that the quality of what emerges from these bodies is variable and the Court has accordingly carefully scrutinized recommendations, reports and comments that have emerged from such bodies. And in this role, the Court has not stood back from concluding that a treaty-monitoring body has erred. It did so, for example, in the case of the Committee against Torture in the *Obligation to Prosecute or Extradite* case in which it concluded that the Committee had failed to address the temporal application of the convention[17].

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[13] POUAE, Vol. III, Ann. 39: Draft International Convention on the Elimination of All Forms of Racial Discrimination, *UNGAOR, Twentieth Session*, Report of the Third Committee, doc. A/6181, 18 Dec. 1965, p. 13, para. 37; POUAE, Vol. III, Ann. 41: *UNGAOR, Twentieth Session, Third Committee*, 1307th Meeting, doc. A/C.3/SR.1307, 18 Oct. 1965, paras. 8-12.

[14] POUAE, Vol. III, Ann. 41: *UNGAOR, Twentieth Session, Third Committee*, 1307th Meeting, doc. A/C.3/SR.1307, 18 Oct. 1965, para. 8.

[15] POUAE, paras. 97-115. The specific point is addressed at paras. 112-114. See also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II),* p. 436, para. 4, joint declaration of Judges Tomka, Gaja and Gevorgian; see also *I.C.J. Reports 2018 (II),* p. 483, para. 6, dissenting opinion of Judge Salam.

[16] CR 2020/7, p. 18, para. 24 (Al-Khulaifi); p. 35, para. 6 and pp. 46-49, paras. 44-53(Amirfar); p. 63, paras. 18-20 (Schrijver).

[17] *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II),* pp. 457-458, paras. 101-102.

24. In the circumstances of *this* case, I have already addressed the weight that should properly attach to General Recommendation XXX, which was issued without any opportunity for States to comment on a draft circulated by the Committee. Indeed, in a thematic debate that preceded the drafting of General Recommendation XXX, the participation was almost exclusively from civil society[18]. General Recommendation XXX carries no imprimatur of State practice and cannot be taken to reflect the views of States parties.

25. Fifth, I come to the Committee's decision on jurisdiction in this case[19]. The Committee addressed the UAE nationality objection in a single sentence: "It [the nationality objection] does not affect the jurisdiction of the Committee and has to be examined when dealing with the question of the admissibility of the communication."[20] That's it! And, in the paragraphs addressing this issue in its decision on admissibility[21], the Committee essentially relied on what it termed its own "constant practice" of exercising competence to conclude that Qatar's Communication was admissible[22].

26. Mr. President, Members of the Court, the UAE does not consider that there is any need to address the detail of these decisions further. You have the UAE's communications with the Committee[23]. You also have our Notes Verbales to the Conciliation Commission which, while reserving the UAE's position on the Committee's procedures, nonetheless, without caveat or equivocation, commits the UAE to good faith engagement with the Conciliation Commission[24]. This is the UAE's position, formally stated to the Court in these proceedings as well. The UAE is

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[18] Committee on the Elimination of Racial Discrimination (CERD Committee), Summary Record of the 1624th Meeting, 1 Mar. 2004, UN doc. CERD/C/SR.1624.

[19] CERD Committee, Jurisdiction of Inter-State communication submitted by Qatar against the United Arab Emirates, 27 Aug. 2019, UN doc. CERD/C/99/3, at https://www.ohchr.org/Documents/HRBodies/CERD/CERD-C-99-3.pdf.

[20] CERD Committee, Jurisdiction of Inter-State communication submitted by Qatar against the United Arab Emirates, 27 Aug. 2019, UN doc. CERD/C/99/3, at https://www.ohchr.org/Documents/HRBodies/CERD/CERD-C-99-3.pdf, para. 57.

[21] CERD Committee, ***Admissibility*** of Inter-State communication submitted by Qatar against the United Arab Emirates, 27 Aug. 2019, UN doc. CERD/C/99/4, at https://www.ohchr.org/Documents/HRBodies/CERD/CERD-C-99-4.pdf.

[22] CERD Committee, ***Admissibility*** of Inter-State communication submitted by Qatar against the United Arab Emirates, 27 Aug. 2019, UN doc. CERD/C/99/4, at https://www.ohchr.org/Documents/HRBodies/CERD/CERD-C-99-4.pdf, para. 63.

[23] Judges' folder (31 Aug. 2020), tabs 5-7.

[24] Judges' folder (31 Aug. 2020), tabs 2-4.

content to leave it to the Court to consider what weight should be given to the Committee's practice.

IV. The UAE's engagement with the Geneva procedures

27. Mr. President, Members of the Court, I come to my last topic: the UAE's engagement with the Geneva procedures. I have two points to make.

28. First, contesting jurisdiction and admissibility, and expressing concerns with the Committee's procedure, is not improper. Due process rests on fair and transparent procedures, robustly tested, and on reasoned decision-making. The UAE does not resile from its engagement with the Committee. On the contrary, Mr. President, Members of the Court, it invites the Court to scrutinize that engagement carefully. But for all its concerns, the UAE never walked away from these procedures and, in the Conciliation Commission now established, it sees opportunity to address its dispute with Qatar in the round, in the hope of achieving an amicable settlement. There is nothing on which to fault the UAE in its approach.

29. My second point goes wider. Mr. Martin argued on Wednesday, invoking *Tehran Hostages*, that there was nothing unusual about different dispute settlement procedures operating in parallel in the same dispute[25]. But there is, and for good reason. The *Tehran Hostages* example, and, I venture to suggest, any other example that Mr. Martin may be able to find, hinges on the express consent of the parties to such parallel proceedings.

30. There is no such consent in the present case. And I add that the practice of States indicates an antipathy to contemporaneous conciliation and adjudication proceedings in respect of the same dispute.

31. The best example of this is Part XV of United Nations Convention on the Law of the Sea (UNCLOS), with its differentiation between the procedures in Section 1, which includes voluntary conciliation, and those in Section 2, addressing procedures entailing binding decisions. Similarly, compulsory conciliation under UNCLOS Article 298 is an alternative to adjudication. I note also that a differentiation between conciliation and adjudication is found in many, many other treaties, one example being the Vienna Convention on Succession of States in Respect of

[25] CR 2020/7, p. 56, para. 26 (Martin).

Treaties (VCSST)[26]. The Organisation of Islamic Cooperation (OIC) also has some experience of this approach[27].

32. Mr. President, Members of the Court, perhaps the clearest example of an approach adopted to parallel proceedings arose in the *Timor-Leste/Australia* conciliation under Annex V of UNCLOS. In that case, the Conciliation Commission took the view that the conciliation process could not proceed effectively while arbitration proceedings between the parties on closely related matters were ongoing. The Commission accordingly proposed that Timor-Leste withdraw its arbitration complaints in two pending cases, which Timor-Leste did[28]. And the rest is history. The Commission succeeded in brokering an agreement on what had been an historically deadlocked issue.

33. Mr. President, Members of the Court, my concluding point is also from *Timor-Leste/Australia*. In that process, Australia contested the jurisdiction of the Conciliation Commission. When that was resolved[29], Australia committed itself fully to the conciliation process[30]. And the Conciliation Commission engaged with the whole of the dispute in an endeavour to find an amicable solution. And it did so. This is the approach that we are hoping for from the Conciliation Commission in this case.

34. Mr. President, Members of the Court, that concludes my submissions this afternoon. I thank you very much for your attention. And I hope, Mr. President, Members of the Court, that you were able to hear me clearly enough. Mr. President, may I ask you, please, to call upon Dr. Sheeran to continue the UAE's submissions. Thank you.

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[26] Vienna Convention on Succession of States in Respect of Treaties, 23 August 1978: United Nations, *Treaty Series (UNTS)*, Vol. 1946, p. 3, Arts.41-43, at https://legal.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf.

[27] For example, the OIC Agreement for Promotion, Protection and Guarantee of Investments Among Member States of the Organisation of the Islamic Conference, Art. 17, at http://ww1.oic-oci.org/english/convenion/Agreement%20for%20Invest%20in%20OIC%20%20En.pdf.

[28] Report and Recommendations of the Compulsory Conciliation Commission between Timor-Leste and Australia on the Timor Sea, 9 May 2018 (PCA Case No. 2016-10), pp. 29-36, in particular paras. 90, 95 (3), 96 and 106, at https://pcacases.com/web/sendAttach/2327.

[29] Timor Sea Conciliation (PCA Case No. 2016-10), Decision on Australia's Objections to Competence, 19 Sept. 2016, available at https://pcacases.com/web/sendAttach/10052.

[30] Report and Recommendations of the Compulsory Conciliation Commission between Timor-Leste and Australia on the Timor Sea, 9 May 2018 (PCA Case No. 2016-10), para. 221, at https://pcacases.com/web/sendAttach/2327.

The PRESIDENT: I thank Sir Daniel Bethlehem for his statement. I now invite Mr. Scott Sheeran to take the floor. You have the floor.

I am afraid we cannot hear Mr. Sheeran. Could you please turn on your microphone? No. Not yet. Can you try again, Mr. Sheeran, now? Thank you.

Mr. SHEERAN: My apologies, Mr. President. Can the Court hear me now?

The PRESIDENT: Yes.

Mr. SHEERAN:

THE ABSENCE OF JURISDICTION *RATIONE MATERIAE*

I. Introduction

1. Mr. President, Madam Vice-President, Members of the Court, as the UAE stated on Monday, this case concerns the UAE's differential treatment of Qatari nationals based solely on their nationality. It is a nationality case. It is not a national origin case.

2. While Qatar is the Applicant, in respect of preliminary objections Qatar must engage with the objections put to the Court. The UAE has done its best to make clear the nature of our objections. We have sought to isolate the key questions for the Court's determination. While we appreciated the engagement of Qatar's representatives on Wednesday, Qatar did not fully engage with our preliminary objections. As I will demonstrate, Qatar is not being entirely forthright in its arguments, or faithful to its Application.

3. A common theme is that Qatar tries its best to now present its case as one based on national origin. But try as they may, they have been unable to fully sweep all of their nationality-based claims under the proverbial rug. Qatar said nothing in its first round of pleadings that was new, or that has undermined the validity of the UAE's preliminary objections concerning the scope *ratione materiae* of the CERD. The only parts of their speeches that had any potential to raise a challenge for the UAE's case, in fact do not, since they are divorced from Qatar's Application, and additionally, inconsistent with the claims of fact provided by Qatar to the Court.

4. The Court's jurisdictional inquiry is whether the allegations of fact, contained in Qatar's material put into the record, even if established to be true, fall within the scope *ratione materiae* of

the Convention. This inquiry is particularly focused on the prohibited grounds of discrimination of race, colour, descent, or national or ethnic origin.

5. The mere fact that a State party to CERD alleges discrimination based on a ground proscribed under Article 1 (1) does not, simply of itself, bring a dispute within the scope of the Convention. As the Court stated in *Nicaragua* v. *Honduras*: "The existence of jurisdiction of the Court in a given case is . . . not a question of fact, but a question of law to be resolved in light of the relevant facts."[31] The Court's role is to ascertain objectively the scope of the alleged facts.

II. Commonalities of the UAE and Qatari positions

6. Mr. President, with a view to assisting the Court to focus on the critical questions for its determination, I wish to address what, based on the first round of pleadings, is common in the two Parties' submissions.

7. The Parties agree that there is no differential treatment in this dispute that can be ascribed as "based on" race, colour, descent or ethnic origin. The only ground in question is national origin, and, as explained by Sir Daniel, the Parties disagree on whether or not nationality is subsumed into the meaning of national origin.

8. The Parties agree that Qatar's interpretation — in which nationality is subsumed into national origin — will apply to many States parties. As counsel for Qatar said on Wednesday: "For a considerable number of people on the planet, nationality is ultimately just as immutable as descent or ethnicity."[32] Have no doubt that Qatar's interpretation will transform the nationals of Poland, Kenya, Thailand and Barbados, for example, and many more States parties, into protected groups under the CERD.

9. The Parties agree that in applying *Ukraine* v. *Russia* to the present case, it means that the Court must determine whether there is a protected group within the scope of the CERD[33]. In line with Qatar's Application, and its oral submissions on Wednesday, the key question is which group

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[31] *Border and Transborder Armed Actions (Nicaragua* v. *Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 76, para. 16.

[32] CR 2020/7, p. 28, para. 21 (Klein).

[33] ***CR 2020/7, p. 38, para. 17;*** p. 39, para. 19; p. 40, para. 26; p. 41, para. 28 and pp. 41-42, paras. 29-30 (Amirfar); ***p. 59, para. 7;*** p. 60, para. 8; p. 64, para. 24; ***p. 64, para. 24*** (Schrijver). *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 of 8 November 2019*, paras. 95-96.

is "targeted"[34] by the UAE's measures. In this regard, the Court needs to determine whether the UAE's measures as alleged by Qatar address a group based on nationality, or rather, national origin.

10. The Parties further agree that the term "based on", as it features in Article 1 (1), refers to whether the measures "expressly" or "directly implicate" a protected group under the CERD. This understanding was helpfully set out by Judge Crawford in his separate opinion on the Court's 2017 Order on provisional measures in *Ukraine* v. *Russia*[35]. The Court may wish to apply this understanding in identifying the specific group subject to the UAE's measures.

11. The Parties agree that a number of the UAE's measures are *expressly* addressed to Qatari nationals. There is no doubt that since Qatar changed its claims, it has studiously tried to avoid acknowledging this point. However, Qatar's counsel in questioning the legitimacy and proportionality of the UAE measures referred to measures "punishing all of the nationals of a State" or "addressed to all of the nationals of a State"[36]. Furthermore, Qatar's counsel also stated that "the UAE's measures are *not exclusively* 'addressed to' Qatari nationals"[37]. Qatar's counsel went on to state the so-called Anti-Qatari incitement campaign and Anti-Sympathy Law were not exclusively based on nationality[38]. The implication is clear, that Qatar accepts that the immigration controls and request to leave were expressly based on nationality.

III. The differences between the UAE and Qatar

12. Mr. President, Members of the Court, I now wish to focus on the key differences between the UAE and Qatar in respect of the preliminary objections. I wish to make six brief points.

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[34] CR 2020/7, p. 41, para. 28 (Amirfar); see also p. 12, para. 4 (Al-Khulaifi).

[35] *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.

[36] CR 2020/7, p. 31, para. 30 (Klein).

[37] CR 2020/7, p. 42, para. 32 (Amirfar); emphasis added.

[38] CR 2020/7, p. 42, para. 32 (Amirfar).

13. First, in the context of identifying whether a protected group under the CERD was targeted by the UAE request to leave, the 5 June 2017 Declaration[39] is central. I previously noted that "Qatari residents and visitors" must be read in proper context, including the Declaration's references to Qatari nationals, and to Emirati nationals leaving Qatar[40]. Residents and visitors are not groups that can be defined by reference to national origin. I noted that Qatar's own statements afterwards, from its Embassy and Minister of State for Foreign Affairs, confirmed its understanding that the request was targeted at Qatari nationals. In reply, counsel for Qatar tried to sidestep this by avoiding Qatar's own statements, and simply asserted that "any targeting of Qatari nationals necessarily includes targeting of persons of Qatari origin"[41].

14. Second, I previously explained that Qatar's Application expressly included the claim that the UAE's measures are based on nationality[42]. This point was also affirmed by Qatar in 2018 in the first provisional measures hearing before the Court[43]. Moreover, Qatar's formal request to the UAE for negotiations, and its institution of proceedings before the CERD Committee, both referred to nationality as the *sole* basis for the UAE's measures[44]. In Qatar's own words, it was exclusive; there was no other basis. Again, in reply, and perhaps not wishing to be drawn on the fundamental problem, Qatar's counsel simply did not engage on this point or discrepancy.

15. Third, in my prior remarks, I set out the UAE position that corporations do not have a human right against racial discrimination under the CERD[45]. Qatar's counsel responded, simply and without further explanation, that the UAE's action "infringed upon the freedom of expression of Qatari ideas and culture in a broader sense"[46]. This recasting of its claim did nothing to address that the alleged victim is not a rights holder under the CERD. In addition, that response was not

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[39] POUAE, Vol. III, Ann. 56: Declaration of the United Arab Emirates, 5 June 2017; judges' folder (31 Aug. 2020), tab 12.

[40] CR 2020/6, p. 45, para. 27, p. 47, para. 35 (Sheeran).

[41] CR 2020/7, p. 43, para. 36 (Amirfar).

[42] CR 2020/6, pp. 42-43, para. 18 (Sheeran).

[43] CR 2020/6, p. 43, paras. 19-20 (Sheeran).

[44] CR 2020/6, p. 43, para. 21 (Sheeran).

[45] CR 2020/6, p. 48, paras. 38-40 (Sheeran).

[46] CR 2020/7, p. 42, para. 33 (Amirfar).

pleaded in its Application, and nor is it mentioned in the part of Qatar's Memorial cross-referenced for this new argument.

16. Fourth, I previously explained that, based on facts alleged by Qatar, the UAE cybercrime legislation could not be characterized as a "Qatari anti-sympathy law"; I noted there were no amendments to the law as Qatar had suggested, the law did not refer to Qatar in any form whatsoever, and the law prohibited racial discrimination[47]. Qatar's counsel responded by simply reasserting that this is an anti-sympathy law, and added that "the Anti-Sympathy Law operate[s] to single out Qataris on the basis of personal characteristics"[48]. There is nothing credible in that response.

17. Fifth, in Qatar's oral submissions, it continued to rely heavily on the device employed in its Application, that is, to be deliberately unclear and to say "Qataris" instead of specifying whether it meant Qatari nationals or Qatari national origin. Qatar's Agent and its counsel were all complicit, and referred to targeting "Qataris"[49], taking action against "individual Qataris"[50], "Qataris as a group"[51], "Qataris en masse"[52], "sing[ling] out Qataris, and only Qataris"[53], ***and*** "inflict[ing] severe punishment on . . . Qataris"[54]. The reason is clear, because in the vast majority of instances the fallacy would be revealed if they referred to "those of Qatari national origin", rather than simply "Qataris".

18. Sixth, in respect of the so-called "anti-Qatari incitement campaign", I explained that the material put into the record did not sustain a claim of action, or even inaction, concerning incitement against individuals of Qatari national origin. The three key allegations of fact made by Qatar did not even involve a single individual who was of Qatari nationality or Qatari national

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[47] CR 2020/6, p. 50, paras. 47-48 (Sheeran).

[48] CR 2020/7, p. 42, para. 32 (Amirfar).

[49] CR 2020/7, pp. 12-13, paras. 3, 4, 6 and 7 ; p. 14, para. 9 (Al-Khulaifi); p. 24, paras. 12 and 13 (Klein); p. 42, para. 33 (Amirfar); p. 58, para. 3 ; p. 59, para. 7 (Schrijver).

[50] CR 2020/7, p. 14, paras. 8 and 10 (Al-Khulaifi).

[51] CR 2020/7, p. 14, para. 9 (Al-Khulaifi); p. 34, para. 2 (Amirfar).

[52] CR 2020/7, p. 15, para. 10 (Al-Khulaifi).

[53] CR 2020/7, p. 13, para. 5 (Al-Khulaifi); see also p. 34, para. 2 ; p. 38, para. 15 ; p. 42, para. 32 (Amirfar).

[54] CR 2020/7, p. 34, para. 2 (Amirfar).

origin[55]. I also demonstrated that the allegations of fact, even if true, concerned actions or comments directed towards the State of Qatar. Again, Qatar did not meaningfully respond.

19. In the spirit of assisting the Court, there is another latent trend in Qatar's revision of its claims, as manifest in its oral argument, that the UAE wishes to highlight. The more that Qatar has spoken about "national origin", the more it appears that Qatar is invoking "ethnic origin" as the ground of discrimination under the CERD.

20. Qatar's claims of fact include that Qatari national origin concerns "a historical-cultural community defined by a distinct heritage, particular family or tribal affiliations, shared national traditions and culture, and geographic ties" to the Qatar peninsula[56]. In similar terms, the Oxford English Dictionary defines "ethnicity" as: "the fact of belonging to a particular nation or people that shares a cultural tradition"[57]. This ordinary meaning is reflected in what Professor Thornberry states in respect of the CERD, namely that:

> "Where national origin is referred to in appraising discrimination, it is most frequently coupled with 'ethnic origin', suggesting that its *primary register of meaning is ethnicity* and not legal citizenship."[58]

21. The problem for Qatar's claim migrating, over the course of this dispute, in the direction towards "ethnic origin" is that, as Judges Tomka, Gaja and Gevorgian noted:

> "Differences of treatment of persons of a specific nationality may target persons who also have a certain ethnic origin and therefore would come under the purview of CERD, but *this possibility has not been suggested by Qatar*."[59]

IV. Qatar's formulation of the dispute did not include indirect discrimination

22. Mr. President, Members of the Court, Qatar very well understands that the UAE's measures are based *solely* on nationality; it has itself reaffirmed this many times. As that claim cannot fall within the scope *ratione materiae* of the CERD, indirect discrimination has subsequently come onto the scene to play a *crucial* role in Qatar's arguments.

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[55] CR 2020/6, pp. 50-51, para. 50 (Sheeran).

[56] CR 2020/7, p. 39, para. 23 (Amirfar).

[57] "Ethnicity", at https://www.oxfordlearnersdictionaries.com/definition/english/ethnicity.

[58] Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary* (OUP 2016) p. 125.

[59] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II),* joint declaration of Judges Tomka, Gaja and Gevorgian, p. 437, para. 6; emphasis added.

23. This is because the sweep of material in the record is clear that the UAE's measures expressly or directly implicate Qatari nationality. As Sir Daniel noted, the *subject-matter* of Qatar's case is nationality, and in keeping with the Court's long-settled jurisprudence, this falls to be determined by reference to the material before the Court[60]. Qatar's claim that the UAE's measures directly implicate a protected group of Qatari national origin does not stand up to scrutiny.

24. Qatar's challenge, as Judges Tomka, Gaja and Gevorgian noted, is that it has not pleaded an indirect discrimination case. Qatar's Application makes it very clear that it considered the measures "targeted" national origin, albeit with the contrary statement that the UAE's measures targeted nationality[61]. Qatar's Agent and counsel continued that theme on Wednesday, by stating that the UAE's measures "target Qataris based on their national origin"[62] and that the "measures *in fact* directly implicate persons of Qatari national origin by singling them out for discriminatory treatment"[63].

25. No doubt to try and patch a leaky argument, Qatar's counsel asserted on Wednesday that Qatar's is an indirect discrimination claim[64]. Yet, absolutely nowhere is this indirect discrimination claim referred to in Qatar's Application, and nor could it easily be, given that the leitmotif of Qatar's claim is that the UAE's measures "targeted" national origin. There is nothing indirect about that; indeed, Qatar's Agent claimed on Wednesday that the "negative impact was achieved very much by the UAE's purposeful design"[65].

26. In respect of indirect discrimination, the definition under Article 1 (1) of the CERD is *not* textually open in the same manner as the less specific discrimination provisions in the general human rights treaties[66]. The key point in this regard is that a State cannot escape its obligations by disguising its measures of racial discrimination. In *L. R.* v. *Slovakia*, a CERD Committee communication which concerned racial discrimination against Roma people in Slovakia, the

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[60] CR 2020/6, p. 32, paras. 24-25 (Bethlehem).

[61] CR 2020/6, p. 42, para. 18 (Sheeran).

[62] CR 2020/7, pp. 12-13, para. 4 (Al-Khulaifi).

[63] CR 2020/7, p. 44, para. 37 (Amirfar); original emphasis.

[64] CR 2020/7, p. 39, para. 21, pp. 41-42, paras. 29, p. 44, para. 37 (Amirfar).

[65] CR 2020/7, p. 13, para. 8 (Al-Khulaifi).

[66] See ICCPR, Articles 2 (1) and 26; ECHR, Article 14; IACHR, Articles 1 (1) and 24.

Committee suggested that "indirect discrimination" refers to "measures *which are not discriminatory at face value* but are discriminatory in fact and effect"[67].

27. The relationship of nationality and national origin reveals why Qatar did not initially run an argument of indirect discrimination in its Application. It is not a good fit for either the alleged facts or the way in which Qatar originally formulated its claims before the Court.

28. Mr. President, Qatar's counsel in these oral pleadings found a final device to raise the bar for the Court. They have done so by saying the Court could not decide, at the preliminary objections stage "that Convention obligations *are incapable of being engaged in any way* where a measure is based, at least nominally, upon nationality"[68]. This statement may have some appeal in abstract, but the problem is it is inconsistent with Qatar's pleaded case. The jurisdictional decision for the Court is not abstract, it has to be based on Qatar's formulation of the dispute, and furthermore, in particular on the formulation in the Application. This must include the factual allegations made by Qatar therein.

29. The UAE of course does not suggest that the Application is a straitjacket for Qatar. However, the Court can be significantly aided in its objective determination of the dispute, for jurisdictional purposes, by reviewing the Application, and Qatar's prior and subsequent position that the UAE's measures were based on nationality.

30. Qatar's request to negotiate, dated 25 April 2018, is important to both of the UAE's preliminary objections, which are independent but intertwined. This request is what Qatar relies on for its argument that the conditions of Article 22 are satisfied. But it also goes to the *subject-matter* of Qatar's claims. This document is plain in alleging that the UAE's measures discriminated against "Qatari citizens and companies *on the sole basis of their nationality*".

31. Mr. President, Members of the Court, *this* is the case that Qatar, six weeks later, brought to the Court.

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[67] CERD Committee, Communication No. 31/2003, *L. R. et al.* v. *Slovakia*, Opinion of 7 March 2005 (UN doc. CERD/C/66/D/31/2003), para. 10.4 (emphasis added). See also CERD Committee, General recommendation No. 32: The meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination (2009), UN doc. CERD/C/GC/32, para. 8; and CERD Committee, Concluding Observations, United States of America, 5 Mar. 2008, UN doc. CERD/C/USA/CO/6, para. 10.

[68] CR 2020/7, p. 60, para. 9 (Schrijver); original emphasis.

V. Subject-matter of the dispute and Article 22

32. Mr. President, there is a more important point here, upon which I wish to finish. Qatar's *ex post facto* shift in its claims, in order to shoehorn this dispute into the racial discrimination framework, have generated a much more significant problem for the Court.

33. This concerns whether Qatar can be seen to have met the negotiation precondition under Article 22, when it has so significantly changed its formulation of the dispute in respect of the Convention. In *Georgia* v. *Russia*, the Court stated the following on this issue:

> "[T]o meet the precondition of negotiation in the compromissory clause of a treaty, these negotiations must relate to the subject-matter of the treaty containing the compromissory clause. In other words, *the subject-matter of the negotiations must relate to the subject-matter of the dispute* which, in turn, must concern the substantive obligations contained in the treaty in question."[69]

34. I will repeat that once more: "the subject-matter of the negotiations must relate to the subject-matter of the dispute". Qatar requested negotiations with the UAE on a dispute concerning the interpretation and application of the CERD relating to UAE's measures that it alleged were based *solely* on nationality. In light of Qatar's arguments and reformulation of its claim, if accepted by the Court, the dispute is now different. It is a dispute that the UAE's measures are contrary to the Convention as they result in indirect discrimination that intentionally targets those of Qatari national origin. This is substantially and materially different from the framing of the dispute in respect of the CERD as detailed in Qatar's request for negotiations.

35. The UAE submits that Qatar is putting the Court in a very difficult position, if it persists that the Court's jurisdictional decision should be based on these different and new claims, rather than grounded in its Application, as well as its formal request to negotiate under Article 22, and additionally its request to institute proceedings before the CERD Committee. It is very hard to see how the negotiation precondition can be satisfied. In short, the dispute on interpretation and application of the CERD has changed materially.

36. Mr. President, Members of the Court, in summary, the UAE's consistent position is and remains that the UAE's measures only directly implicate those of Qatari national origin if, and to the extent, that they are Qatari nationals. As I said at the beginning, this is a nationality case; it is

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[69] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 133, para. 161; emphasis added.

not a national origin case. As such, the *subject-matter* of the dispute does not fall within the scope *ratione materiae* of the CERD.

37. Thank you, Mr. President, Madam Vice-President and Members of the Court, I would now like to request that the President call Professor Mathias Forteau to the podium. Thank you.

Le PRESIDENT : Je remercie M. Sheeran de son exposé. Je donne à présent la parole au Professeur Mathias Forteau. Vous avez la parole.

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

L'INCOMPETENCE DE LA COUR EN RAISON DU NON-RESPECT DES PRECONDITIONS PROCEDURALES DE L'ARTICLE 22

1. Monsieur le président, Mesdames et Messieurs de la Cour, ma tâche cet après-midi consistera à répondre aux arguments du Qatar relatifs aux préconditions procédurales de l'article 22. Je pourrai être relativement bref, dans la mesure où nos contradicteurs ont très largement esquivé mercredi les arguments que nous avions formulés lundi[70].

2. Je commencerai par indiquer que je maintiens, en tous points, mes «ruminations» de lundi[71], pour reprendre le mot aimable de M. Martin[72].

3. Je soulignerai ensuite qu'il est désormais évident que la seconde exception préliminaire place le Qatar dans le plus grand embarras. Nous avons entendu mercredi l'agent du Qatar confirmer que la conciliation est en cours entre les Parties[73], mais, en revanche, nous n'avons rien entendu du tout sur le fait que les procédures expressément prévues par la convention ont été activées et sont en cours, ni sur l'effet que cela produit sur la mise en œuvre de l'article 22 dans les circonstances particulières de la présente affaire. Ce silence est tout à fait assourdissant.

4. Le Qatar s'est pour l'essentiel limité mercredi à répéter que, selon votre arrêt dans l'affaire *Ukraine c. Russie*, les préconditions de l'article 22 sont «alternatives». M. Martin a reproché sur ce point aux Emirats arabes unis d'avoir changé de position depuis leurs écritures, en ne plaidant plus

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[70] CR 2020/6, p. 27-28, par. 4-8, et p. 33-34, par. 27-31 (Bethlehem) ; et p. 53-67 (Forteau).

[71] CR 2020/6, p. 53-67 (Forteau).

[72] CR 2020/7, p. 57, par. 28 (Martin).

[73] CR 2020/7, p. 17, par. 18 (Al-Khulaifi).

désormais que ces préconditions seraient cumulatives[74]. Nous pensons, pour notre part, que la Cour nous sera reconnaissante, d'une part d'avoir tenu compte de ses décisions les plus récentes, d'autre part de nous efforcer de l'éclairer et de l'assister au mieux pour déterminer comment l'article 22 s'applique en la présente instance au regard de sa jurisprudence.

5. Cette assistance que les Parties doivent à la Cour n'a rien de superflu en la présente affaire dès lors que, quand bien même les préconditions de l'article 22 sont alternatives, cela ne suffit certainement pas à régler la question de votre compétence. Certes, comme M. Martin l'a dit, ««Alternative» means «alternative»»[75], mais en disant cela, on n'a pas avancé d'un pas. La question qui vous est posée en effet n'est pas de savoir si *dans l'abstrait* ces préconditions sont alternatives, comme M. Martin semble le penser de manière trop simpliste. La question pertinente est de savoir si, *dans le contexte procédural particulier de la présente affaire*, les préconditions de l'article 22 sont remplies.

6. Ce contexte est décisif pour apprécier le respect de la précondition des procédures expressément prévues par la convention, comme je l'ai montré lundi[76]. Et il est tout autant décisif pour apprécier le respect de la précondition des négociations, ce que M. Martin a négligé totalement mercredi, comme je le montrerai dans un premier temps.

7. Je montrerai ensuite que le Qatar, suivant une inspiration déjà présente dans son mémoire[77], a semblé par ailleurs estimer mercredi que l'article 22 n'imposerait en réalité aucune véritable précondition procédurale, ce qui entre en contradiction flagrante avec votre jurisprudence.

I. La précondition des négociations n'est pas remplie

8. En ce qui concerne tout d'abord la précondition des négociations, M. Martin a affirmé mercredi que le Qatar aurait rempli cette précondition au motif qu'il aurait envoyé le 25 avril 2018 une lettre «inviting negotiations, a letter that was the culmination of all its prior efforts»[78]. Cette

[74] CR 2020/7, p. 50, par. 3-4, et p. 53, par. 15 (Martin).

[75] CR 2020/7, p. 54, par. 19 (Martin).

[76] CR 2020/6, p. 54-56, par. 4-8 (Forteau).

[77] MQ, par. 3.115.

[78] CR 2020/7, p. 51, par. 7 *in fine* (Martin).

affirmation n'est aucunement fondée en fait et elle ne tient aucunement compte de la jurisprudence de la Cour.

9. Il est pour commencer faux d'affirmer que l'offre de négocier du 25 avril 2018 serait le point culminant d'efforts préalables :

a) Tout d'abord, et nous vous invitons sur ce point en particulier à relire attentivement les annexes 50 à 67 du mémoire du Qatar, aucun des documents produits par le Qatar pour la période antérieure au 25 avril 2018 ne se réfère à la CIEDR ni même à la discrimination raciale ; le Qatar a d'ailleurs concédé dans son mémoire que ces documents ne contiennent aucune référence à la CIEDR[79].

b) Ensuite et de toute manière, aucun de ces documents ne constitue une offre de négocier ; il s'agit-là d'accusations ou de protestations ; or, votre jurisprudence est claire quant au fait que «de simples protestations ou contestations» ne valent pas négociation[80].

c) En réponse, le Qatar a prétendu que l'objet du présent différend aurait été mentionné dans certains de ces documents, puisque, selon lui, certains feraient référence aux mesures litigieuses prises par les Emirats arabes unis contre les ressortissants du Qatar ou à des «violations des droits de l'homme»[81]. Mais cela ne suffit cependant pas au regard de votre jurisprudence. Le standard applicable, qui n'est pas celui qu'invoque le Qatar dans ses écritures[82], est autrement plus exigeant : votre jurisprudence relative à la précondition des négociations impose que référence soit faite dans les échanges entre les Parties «aux obligations de fond prévues par [la convention] en question»[83] : or, je le répète, à aucun moment les obligations relatives à l'interdiction de la discrimination raciale n'ont été évoquées par le Qatar dans ces documents.

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[79] MQ, par 3.186.

[80] CR 2020/6, p. 63-64, par. 27 (Forteau) ; *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Géorgie c. Fédération de Russie), exceptions préliminaires, arrêt, C.I.J. Recueil 2011 (I)*, p. 132, par. 157.

[81] MQ, par. 3.182 et EEQ, par. 3.52 ; voir aussi MQ, par. 3.178-3.182 ; EEQ, par. 3.49-3.52.

[82] EEQ, par. 3.52 ; voir aussi MQ, par. 3.165, ainsi que par. 3.186.

[83] *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Géorgie c. Fédération de Russie), exceptions préliminaires, arrêt, C.I.J. Recueil 2011 (I)*, p. 133, par. 161 ; *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. 69.

d) Quant à l'argument du Qatar selon lequel les Emirats arabes unis auraient indiqué avant le 25 avril 2018 qu'il n'y avait rien à négocier[84], il ne conduit nulle part en l'occurrence (à supposer qu'il corresponde à la réalité) puisque, précisément, avant cette date, le Qatar n'a jamais fait savoir qu'il avait des griefs relatifs *aux obligations de la CIEDR* ; il n'y avait donc, par définition, rien à négocier sur ce point.

e) J'ajouterai que les Emirats arabes unis pouvaient difficilement déduire des documents antérieurs au 25 avril 2018 que le Qatar alléguerait un jour que les mesures prises contre ses ressortissants violent la CIEDR : comme nous l'avons montré, de telles allégations ne relèvent manifestement pas du champ de cette convention et n'ont rien à voir avec la discrimination raciale.

10. Ne reste donc que l'offre de négocier du 25 avril 2018, dans laquelle pour la première fois le Qatar se réfère dans ses échanges avec les Emirats arabes unis à la CIEDR et à la discrimination raciale[85].

11. Pour déterminer si cette offre suffit à remplir la précondition des négociations de l'article 22, il ne suffit pas de dire qu'il y aurait eu une offre de négocier. Ceci n'est que l'un des éléments de la précondition des négociations[86]. Par ailleurs, tout dépend du contexte dans lequel cette offre est intervenue. Selon votre jurisprudence constante, «déterminer si des négociations … ont eu lieu et si elles ont échoué, sont devenues inutiles ou ont abouti à une impasse est essentiellement une question de fait, «une question d'espèce» (*Concessions Mavrommatis en Palestine, arrêt n° 2, 1924, C.P.J.I. série A n°* 2, p. 13)»[87]. Or, le contexte factuel de la présente affaire montre qu'il n'est pas possible de dissocier l'offre de négocier du 25 avril 2018 du recours aux procédures expressément prévues par la convention, raison pour laquelle, comme je l'ai indiqué lundi, peu importe en définitive dans la présente affaire que les préconditions

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[84] Voir MQ, par. 3.176-3.177 ; EEQ, par. 3.50-3.51.

[85] MQ, annexe 68.

[86] *Questions concernant l'obligation de poursuivre ou d'extrader (Belgique c. Sénégal), arrêt, C.I.J. Recueil 2012 (II),* p. 445-446, par. 57 ; *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. 116.

[87] *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Géorgie c. Fédération de Russie), exceptions préliminaires, arrêt, C.I.J. Recueil 2011 (I),* p. 133, par. 160 ; *Appel concernant la compétence du Conseil de l'OACI en vertu de l'article 84 de la convention relative à l'aviation civile internationale (Arabie saoudite, Bahreïn, Egypte et Emirats arabes unis c. Qatar), arrêt du 14 juillet 2020*, par. 93.

de l'article 22 soient considérées comme alternatives ou cumulatives : elles font partie en l'espèce du même ensemble procédural, qui est toujours actif à ce jour[88].

12. Quels sont les éléments pertinents de ce contexte procédural, sur lequel M. Martin a gardé le silence le plus complet ?

a) *Premièrement*, l'offre de négocier a été formulée plus d'un mois *après* que le Qatar a déclenché la procédure des articles 11 à 13 et, j'y reviendrai dans un instant, *avant* que les Emirats arabes unis aient été informés de la saisine du Comité CERD par le Qatar. Cela signifie que le Qatar a formulé une offre de négocier alors qu'il savait pertinemment qu'il avait déjà déclenché la procédure des articles 11 à 13. Qui plus est, l'offre de négocier du 25 avril ne fait aucune mention du tout de la saisine du Comité opérée plus d'un mois plus tôt. Il est douteux qu'il s'agisse là d'une offre de négocier formulée de bonne foi : pourquoi, doit-on se demander, le Qatar a-t-il caché à l'Etat avec lequel il prétendait vouloir entrer en négociation de bonne foi l'existence de la plainte soumise quelques semaines plus tôt au Comité ?

b) *Deuxièmement*, l'offre de négocier du 25 avril n'a été en réalité communiquée aux Emirats arabes unis que le 1er mai. Or, trois jours plus tard seulement, le 4 mai, le Comité CERD a décidé de transmettre la plainte du Qatar aux Emirats arabes unis — plainte dont ces derniers ne savaient rien jusque-là. A la même date, le Comité a décidé d'inviter les Emirats arabes unis, en application de l'article 11 de la convention, à soumettre leurs observations écrites dans un délai de trois mois[89]. Autrement dit, les Emirats arabes unis ont reçu l'offre de négocier du Qatar *au moment même* où ils ont été informés que le Qatar avait déclenché la procédure des articles 11 à 13 à leur encontre et qu'ils devaient dans un délai de trois mois soumettre leurs observations écrites au Comité[90]. Dans ces circonstances, il était légitime pour les Emirats arabes unis de se concentrer sur la première étape de la procédure de l'article 11, à savoir la préparation et la soumission de leurs observations écrites sur la plainte du Qatar. Comme les Emirats arabes unis l'ont écrit, après qu'ils eurent reçu à quelques jours d'intervalle l'offre de négocier et la plainte du Qatar soumise au Comité, il n'y avait «no reason for the UAE *not* to believe that the

[88] Voir CR 2020/6, p. 62-63, par. 26 (Forteau) ; ainsi que EPEAU par. 225-228.

[89] EPEAU, par. 196 et 210.

[90] EPEAU, annexe 12.

procedure of Article 11(1) of the CERD constituted, and was considered by Qatar to constitute, the framework in which the State Parties would resolve their dispute at least at that time»[91]. A la lumière de *ce* contexte, la manière dont les Emirats arabes unis ont réagi en mai 2018 ne constitue certainement pas, comme l'allègue le Qatar, un «refus immédiat et total» de régler le différend à l'amiable[92]. Tout au contraire, les Emirats arabes unis se sont immédiatement engagés dans la première étape du règlement amiable prévu à l'article 11, paragraphe 1, en suivant l'invitation que le Comité CERD leur avait adressée de soumettre leurs observations écrites en réponse à la plainte du Qatar.

c) Cela est au demeurant pleinement conforme à la séquence procédurale établie par l'article 11, paragraphes 1 et 2, qui laisse, à partir du jour de la transmission de la plainte à l'Etat intéressé et avant de pouvoir revenir devant le Comité, d'abord *trois mois* pour la soumission d'observations écrites puis *six mois* pour tenter de régler le différend «à la satisfaction des deux Etats, par voie de négociations bilatérales ou par toute autre procédure qui serait à leur disposition».

d) Je note d'ailleurs que, après que le Comité eut transmis la plainte du Qatar aux Emirats arabes unis début mai, le Qatar n'a jamais réitéré par la suite son offre de négocier du 25 avril, ni assuré son suivi. A l'inverse, il s'est engagé dans la procédure de règlement amiable des articles 11 à 13 (tout en saisissant en parallèle la Cour le 11 juin de la même année, soit quelques semaines seulement après son offre de négocier).

e) *Troisièmement*, lorsqu'il a formulé son offre de négocier, le Qatar pouvait d'autant moins ignorer que la première étape de la procédure de l'article 11 allait être activée que c'est lui-même qui a demandé au Comité, lorsqu'il l'a saisi le 8 mars 2018, «consistent with Article 11(1) of the Convention … [to] transmit this Communication to UAE *for UAE ... to respond within the three month period set forth under that article*»[93]. Le Qatar savait donc parfaitement que son offre de négocier allait intervenir dans un contexte où lui-même avait par ailleurs *déjà* demandé à ce que les Emirats arabes unis soumettent au Comité leurs observations

[91] EPEAU, par. 227.

[92] EEQ, par. 3.46.

[93] EPEAU, annexe 12, par. 123.

écrites en application de l'article 11, paragraphe 1. Le Qatar ne pouvait donc pas ignorer que son offre de négocier se télescoperait avec cette procédure et qu'il était à prévoir, dans ces circonstances, que les Emirats arabes unis commenceraient par le commencement, c'est-à-dire suivraient la première étape de la procédure, celle de l'article 11, paragraphe 1.

13. Par ailleurs, non seulement l'offre de négocier n'a pas été formulée dans un vide procédural comme voudrait le faire croire le Qatar mais au contraire dans le contexte particulier d'une procédure déjà entamée en vertu des articles 11 à 13, mais au surplus, la négociation apparaît dans la CIEDR comme un élément parmi d'autres de la procédure des articles 11 à 13 et non comme un élément distinct de celle-ci — point là aussi totalement ignoré mercredi par M. Martin.

a) Comme la Cour l'a reconnu, les négociations peuvent avoir lieu «en dehors d'échanges diplomatiques bilatéraux»[94].

b) L'article 11, paragraphe 2, se réfère ainsi explicitement aux négociations en tant que partie intégrante de la procédure des articles 11 à 13, ce que le Qatar a souligné dans ses écritures[95].

c) Votre Cour a jugé de même dans l'affaire *Ukraine c. Russie* que les articles 11 à 13 incorporent un mécanisme de négociation[96].

d) Dans le cas où la procédure des articles 11 à 13 est déjà déclenchée et que le demandeur formule une offre de négocier dans ce contexte procédural particulier, peu importe alors que les préconditions de l'article 22 soient qualifiées d'alternatives ou de cumulatives puisque de toute manière, *dans ce contexte particulier*, la procédure des articles 11 à 13 *absorbe* la précondition des négociations. Je n'invente rien ici : c'est le Qatar qui l'écrit dans son mémoire : «The Article 22 requirements cannot be deemed cumulative for the additional reason that if they were, the negotiation requirement would be rendered redundant and thereby deprived of *effet utile*». Why ? Because «negotiation constitutes an element of the CERD procedures»[97].

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[94] *Appel concernant la compétence du Conseil de l'OACI en vertu de l'article 84 de la convention relative à l'aviation civile internationale (Arabie saoudite, Bahreïn, Egypte et Emirats arabes unis c. Qatar), arrêt du 14 juillet 2020*, par. 90 ; *Appel concernant la compétence du Conseil de l'OACI en vertu de l'article II, section 2, de l'accord de 1944 relatif au transit des services aériens internationaux (Bahreïn, Egypte et Emirats arabes unis c. Qatar), arrêt du 14 juillet 2020*, par. 91.

[95] EEQ, par. 3.57.

[96] *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. 110.

[97] MQ, par. 3.124.

e) La Cour a par ailleurs souligné dans l'affaire *Ukraine c. Russie* que «la «négociation» et les «procédures expressément prévues par [la] Convention» constituent deux moyens de parvenir au même objectif, à savoir le règlement d'un différend par voie d'accord»[98] : il s'en déduit que lorsque deux Etats sont engagés dans la procédure des articles 11 à 13, le fait que, à un moment de la procédure, une offre de négocier soit formulée et soit sans réponse ne peut certainement pas signifier que la procédure de règlement amiable est dans l'impasse puisque la convention prévoit alors d'autres moyens pour tenter de régler à l'amiable le différend, en particulier la conciliation.

f) De fait, la procédure des articles 11 à 13 ne prévoit pas, lorsque des négociations sont proposées mais échouent, que cet échec met fin à la procédure ; au contraire, dans ce cas, l'article 11 organise la suite de la procédure en donnant le droit de renvoyer l'affaire au Comité. Et c'est du reste très exactement ce que le Qatar a fait le 29 octobre 2018 en se prévalant de l'article 11, paragraphe 2[99], avant, plus tard, de demander la constitution de la Commission de conciliation[100]. Cela confirme que même après l'expiration de l'ultimatum de 15 jours figurant dans son offre de négocier du 25 avril, le Qatar a estimé que le règlement amiable demeurait possible et qu'il n'était donc pas dans une impasse au moment où la Cour a été saisie.

14. Pour conclure sur ce premier point : le mot «alternatif» n'est pas le mot magique que nos contradicteurs se plaisent à imaginer. Dans la présente affaire en tout cas, les procédures expressément prévues par la convention et l'offre de négocier font partie du même contexte et du même ensemble procédural et ne peuvent donc pas être dissociées. Dans ces circonstances, dès lors que les procédures expressément prévues par la convention ont été les premières activées et qu'elles étaient encore actives au jour de la saisine de la Cour — et elles le sont toujours — la conclusion s'impose d'elle-même : les préconditions de l'article 22 ne sont pas remplies dans la présente instance.

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[98] *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. 110.

[99] EPEAU, annexe 14.

[100] Voir CR 2020/6, p. 56, par. 8 (Forteau).

II. Les préconditions procédurales de l'article 22 doivent être remplies et ne l'ont pas été en l'espèce

15. J'en viens, Monsieur le président, plus brièvement, à mon second point. Dans sa plaidoirie de mercredi, M. Martin a été étrangement silencieux sur le texte et le régime de l'article 22. Et pour cause : l'essentiel de sa plaidoirie a consisté à plaider *contre l'article 22*, article dont le Qatar semble vouloir s'efforcer d'esquiver toute application en l'espèce.

16. M. Martin a tout d'abord invoqué la jurisprudence de la Cour selon laquelle des procédures de règlement amiable peuvent être menées en parallèle d'un procès devant la Cour[101]. Sir Daniel a déjà évoqué ce point. Je me limiterai à ajouter que l'invocation de cette jurisprudence est hors sujet, et au surplus, qu'elle revient à méconnaître ce qui fait l'essence même de l'article 22. La jurisprudence évoquée par M. Martin ne s'applique que lorsque la clause compromissoire n'interdit pas les recours parallèles. Or, précisément ici, l'article 22 interdit de tels recours : il établit une séquence procédurale en deux temps successifs que le demandeur doit respecter. Il interdit de ce fait même de mener en parallèle les tentatives de règlement amiable et la saisine de la Cour[102].

17. M. Martin a par ailleurs plaidé que l'article 22 ne contiendrait aucun langage interdisant des recours parallèles ou autres mécanismes de ce type[103]. C'est pourtant bien ce que fait explicitement l'article 22, en imposant un ordre procédural successif dans l'activation des recours.

18. De même encore M. Martin affirme que l'article 22 n'aurait aucune parenté du tout avec l'article IV du pacte de Bogotá : selon lui, à la différence dudit article IV, l'article 22 n'interdirait en aucune manière les «concurrent proceedings»[104]. Une fois de plus, le Qatar entend ici se soustraire unilatéralement à ce que l'article 22 impose au terme de votre jurisprudence : il faut *d'abord* tenter de régler le différend à l'amiable, et seulement *ensuite* saisir la Cour ; il est interdit en revanche de faire les deux *en même temps*. Or, tel est précisément ce qu'a fait le Qatar et telle est la raison pour laquelle la Cour est incompétente en l'espèce.

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[101] CR 2020/7, p. 56, par. 26-27 (Martin).

[102] *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Géorgie c. Fédération de Russie), exceptions préliminaires, arrêt, C.I.J. Recueil 2011 (I)*, p. 125-128, par. 132-141.

[103] CR 2020/7, p. 55, par. 22 (Martin).

[104] CR 2020/7, p. 56, par. 25 (Martin).

19. De ce point de vue, contrairement à ce qu'a affirmé le professeur Schrijver, la seconde exception préliminaire ne vise pas à «retarder» le règlement du différend[105]. Il s'agit, ni plus, ni moins, de faire respecter l'ordre procédural établi par l'article 22, lequel, je le rappelle, fait écho au principe général énoncé par la Cour — dont M. Martin a concédé la pertinence mercredi[106] — selon lequel le règlement judiciaire doit être réservé aux différends qui n'ont pas pu faire l'objet d'un règlement amiable, règlement amiable qu'il appartient à la Cour de favoriser[107].

20. Monsieur le président, Mesdames et Messieurs de la Cour, je ne pense pas qu'il soit nécessaire d'accaparer davantage votre temps ; je m'arrêterai donc là. La Cour dispose de tous les éléments nécessaires pour statuer sur la seconde exception préliminaire. Au regard des circonstances procédurales particulières de la présente affaire que j'ai rappelées lundi et aujourd'hui, il ne fait aucun doute selon nous que les préconditions procédurales de l'article 22 ne sont tout simplement pas remplies.

21. Mesdames et Messieurs de la Cour, je vous remercie sincèrement de votre attention et je vous serais reconnaissant, Monsieur le président, de bien vouloir appeler maintenant à cette barre virtuelle S. Exc. M. l'ambassadeur AlNaqbi. Je vous remercie, Monsieur le président.

The PRESIDENT: I thank Professor Forteau for his statement. I shall now give the floor to H.E. Ambassador Abdalla Hamdan AlNaqbi. You have the floor, Sir.

Mr. ALNAQBI:

CONCLUDING OBSERVATIONS

1. Mr. President, Members of the Court, it is an honour to conclude my country's oral arguments before our Agent closes the UAE's case and reads our final submissions.

2. Mr. President, Members of the Court, we have a dispute with Qatar — with its Government, for their support for terrorism and extremism in our region, and for not implementing their obligations under the Riyadh Agreements. It is a serious dispute. The UAE and its regional partners invested great efforts in trying to resolve this dispute by negotiation and by agreement. It

[105] CR 2020/7, p. 61, par. 12 (Schrijver).

[106] CR 2020/7, p. 57, par. 28 (Martin).

[107] CR 2020/6, p. 58-59, par. 15-17 (Forteau).

was and is a cause for disappointment that we were unable to resolve this dispute diplomatically and that, in June 2017, we felt that we had no other choice but to terminate relations with Qatar, with all the regrettable consequences that this has had for our region. We would like our region to be whole again, and to live in peace and safety.

3. Our dispute is not with the people of Qatar. They are our brothers and sisters. We are the same race. We are of common descent. That they have been unfortunately affected is not a matter of racial discrimination. As you heard from Sir Daniel Bethlehem, nationality is bestowed by each State by its laws. The nationals of a State have ties of allegiance to their State, both rights and responsibilities. They travel on documents issued by their State. Other privileges flow from nationality, including preferential rights that flow from the friendship between States. This is what has been affected by the dispute between our two States. That people are affected is a consequence of their nationality and is not racial discrimination.

4. You have heard our legal arguments. As the Director of the International Law Department of my country, let me echo everything that has been said by our counsel. They speak with the UAE's authority. But I must say the following. As a representative of my Government, the measures that the United Arab Emirates has taken have not, whether in their words, intent, or effect, addressed anyone other than Qatari nationals. This is plain for all to see from the documents before the Court.

5. Qatar ***calls*** this racial discrimination. It is not. What Qatar seeks is a misuse of the CERD. The CERD does not address disputes between brothers and sisters. It does not address disputes between governments that affect their nationals. The withdrawal of preferential treatment from Qatari nationals — of entry, of residence, of entitlement — because of their nationality and the termination of relations with Qatar, does not come within the scope of the CERD. Differences of treatment between nationals is not addressed by the CERD.

6. Mr. President, Members of the Court, international treaties hold the trust of the States that commit themselves to their terms, after careful thought and internal debate. States understand what they are signing up to. The United Arab Emirates takes its treaty commitments seriously. It ratifies and accedes to treaties the scope of which it studies and understands. Like other States that are party to the CERD, we did not enter into the CERD with the understanding that it addressed either

restrictions or preferences on grounds of nationality. It does not. What Qatar seeks will damage the universal consensus of the CERD. The Court should not allow this to happen.

7. Mr. President, Members of the Court, you also heard from me on Monday, and from our counsel, that the UAE and Qatar are fully engaged in the CERD Committee and Conciliation Commission process. Conciliation cannot take place and be effective in the face of court proceedings. That is not a way to seek the resolution of a dispute. Article 22 of the CERD addresses this. In this case, in which Qatar repeatedly invoked the Committee procedures, these must be permitted to follow their course, unhindered by parallel proceedings in court.

8. We will engage in good faith with the Conciliation Commission even if you find in our favour on the issue of nationality. We will do so hoping that the wise members of the Conciliation Commission will take as the task of their good offices the resolution of the dispute between our two States on the basis of respect for the Convention. Their task will be helped by a clear statement from the Court about the parameters and limits of the CERD. We ask you, therefore, to address the issue of nationality in terms that will provide clarity on this point. We will address it within the conciliation process and invite Qatar to address our concerns as well.

9. Mr. President, Members of the Court, while we would like you to address the issue of nationality, to bring clarity to the point, you do not need to do so. Professor Forteau has addressed you on Article 22. Counsel for Qatar alleged on Wednesday that the UAE did not engage in good faith with the Committee. You heard this afternoon from our counsel in response. It is a respondent's right to test jurisdiction and admissibility. We did so, engaging fully and in good faith with the Committee at every stage. We have concerns, which we think are valid, with the Committee process, but we have not walked away. And, immediately upon the establishment of the Conciliation Commission, we formally and openly committed ourselves to engage with it in good faith. I assure you, we will continue to engage with the Conciliation Commission process.

10. If the conciliation process does not succeed, Qatar has the choice to come back to the Court with a new Application, which would no doubt describe the dispute in terms that would be very different from the dispute that it now seeks to bring to the Court.

11. Mr. President, Members of the Court, the law calls for you to decline jurisdiction in this case. We respectfully request you to do so.

12. Mr. President, Members of the Court, that concludes my submissions this afternoon and the closing of our case. I thank you for your kind attention.

13. Mr. President, may I ask you to call upon the honourable Agent for the United Arab Emirates, Ambassador Hissa Al-Otaiba, to conclude our submissions and read the final submissions of the United Arab Emirates in this case.

The PRESIDENT: I thank Ambassador AlNaqbi for his statement. I shall now give the floor to the Agent of the United Arab Emirates, H.E. Ambassador Hissa Abdullah Ahmed Al-Otaiba. Your Excellency, you have the floor.

Ms AL-OTAIBA:

AGENT'S CLOSING REMARKS AND FINAL SUBMISSIONS OF THE UAE

1. Bismillah al-rahman al-rahim. Mr. President, Members of the Court, it is an honour to close the United Arab Emirates' case in these proceedings and to read our final submissions.

2. You have heard, on Monday and today, from my honoured colleagues from Abu Dhabi — Ambassador Abdalla AlNaqbi, Ms Lubna Qassim Al Bastaki and Dr. Scott Sheeran — and also from our esteemed counsel, Sir Daniel Bethlehem and Professor Mathias Forteau. They will have left you with a clear statement of our legal objections to the jurisdiction of the Court as well as the relationship between the proceedings before the Court that Qatar wishes to pursue and the proceedings before the CERD Committee and Conciliation Commission in Geneva. You have also just heard from Ambassador AlNaqbi, in the clearest terms, about the scope of the measures that the United Arab Emirates took in June 2017 and how these fall outside the scope of the CERD.

3. Mr. President, Members of the Court, the dispute between Qatar and the United Arab Emirates — and others in the region — must be resolved, in the interests of all concerned. Qatar must acknowledge and address our serious security concerns. The privileges that come with the nationality of a once close friend and partner cannot be addressed through court proceedings under the CERD. The United Arab Emirates hopes, however, that, through the good offices of a conciliation process, Qatar will be encouraged to address not only its own grievances but ours as well.

4. Mr. President, Members of the Court, the conciliation process would be assisted by a clear statement from you on the scope of the CERD on the issue of nationality. We commend our case on Article 22 to you, and a finding in our favour on this point would be the most straightforward way in which to address this case. But, in the face of Qatar's claims, the CERD is calling out for clarity on the issue of nationality and we hope that you may be able to assist on this aspect as well.

5. Conciliation is a little-tried approach, but where it has been tried, it has achieved positive outcomes. Our region is a region of hope.

6. Mr. President, Members of the Court, before I read our final submissions, may I take this opportunity on behalf of my delegation to thank you all, and the staff of the Registry, and the interpreters, and your technical advisers, for the efforts that have been made to achieve a fair and efficient hearing in unusual and challenging circumstances. We are grateful to you all.

7. Mr. President, Members of the Court, in accordance with Article 60 (2) of the Rules of Court, I now read the UAE's final submissions:

> "The United Arab Emirates respectfully requests the Court to adjudge and declare that the Court lacks jurisdiction to address the claims brought by the State of Qatar by its Application dated 11 June 2018."

Thank you, Mr. President.

The PRESIDENT: I thank the Agent of the United Arab Emirates. The Court takes note of the final submissions which you have just read on behalf of the Government of the United Arab Emirates. The Court will meet again on Monday 7 September 2020 at 3 p.m., to hear the second round of oral argument of Qatar. The sitting is adjourned.

The Court rose at 4.35 p.m.

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