Corrigé
Corrected

CR 2020/9

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2020

Public sitting

held on Monday 7 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 lundi 7 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
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Gevorgian
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Iwasawa, juges
MM. Cot
Daudet, juges *ad hoc*

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The PRESIDENT: Please be seated. The sitting is open. The Court meets this afternoon to hear the second round of oral argument of Qatar. I would like to recall, for the benefit of those following us through the live streaming of the hearing, that in view of the current COVID-19 pandemic, the Court has opted for a hybrid hearing in this case. 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 by video link. I shall now give the floor to Ms Catherine Amirfar for Qatar. You have the floor, Madam.

Ms AMIRFAR:

I. THE BASIS FOR QATAR'S CLAIMS

1. Mr. President, Madam Vice-President, honourable Members of the Court, good afternoon. It falls on me to open Qatar's second round by addressing the UAE's first preliminary objection and the Court's jurisdiction *ratione materiae*. I will be followed by Professor Pierre Klein, who will also address the UAE's first preliminary objection, and Mr. Lawrence Martin, who will address the UAE's second preliminary objection. Professor Vaughan Lowe will then close the legal submissions, and Dr. Mohammed Al-Khulaifi, the Agent of Qatar, will conclude and read Qatar's final submissions.

2. Mr. President, with your permission, I will first turn to the UAE's arguments about Qatar's case with respect to racial discrimination on the basis of "national origin", and its assertion that Qatar's case focuses exclusively on nationality[1]. I will then briefly address certain specific mischaracterizations of Qatar's claims and evidence that we heard on Friday.

3. I pause at the outset to note that the UAE has profoundly transformed the focus of its first preliminary objection. The UAE's oral submissions said remarkably little about the proper interpretation of the Convention, instead focusing the arguments on an attempt to limit, artificially, the scope of Qatar's claims. Notably, the UAE has never responded to the full scope of Qatar's

[1] See CR 2020/8, p. 13, para. 7 (Bethlehem); CR 2020/8, p. 22, para. 3 (Sheeran).

claims: both in its Preliminary Objections and this past week, the UAE makes the strategic decision to refuse to engage substantively with significant aspects of Qatar's case of discrimination based on national origin[2].

4. The UAE's arguments on Friday were replete with invocations of "mischaracterize[ations]", "masquerading"[3], and even that "Qatar's Agent and its counsel were all complicit" in being "deliberately unclear"[4]. What was missing amidst the UAE's rhetoric was a rigorous and faithful recitation of Qatar's actual formulation of the dispute in its Application and pleadings. Today, I will attempt to correct that marked oversight.

A. Qatar's case is that the UAE is discriminating against Qataris on the basis of national origin

5. I have two main points regarding the subject-matter of the dispute.

6. *First*, the UAE's approach does not comport with the Court's relevant jurisprudence. The Court, in *Ukraine* v. *Russian Federation*, made clear that — in order to determine "on an objective basis the subject-matter of the dispute between the parties" — the Court will examine the application as well as the pleadings of the parties, "while giving particular attention to the formulation of the dispute chosen by the applicant" and "tak[ing] account of the facts that the applicant presents as the basis for its claim"[5]. As the Court put it, the "matter is one of substance, not of form"[6].

7. In its prior cases under the Convention, *Georgia* v. *Russian Federation* and *Ukraine* v. *Russian Federation*, the Court has defined the subject-matter of the dispute as, respectively, "the Russian Federation's compliance with its obligations relating to the elimination of racial discrimination"[7], and "whether the Russian Federation breached its obligations under CERD through discriminatory measures allegedly taken against the Crimean Tatar and Ukrainian

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[2] WSQ, paras. 1.5-1.10; see also POUAE, paras. 9-10; CR 2020/8, p. 28, para. 23 (Sheeran).

[3] See CR 2020/8, p. 14, para. 9 (Bethlehem).

[4] See CR 2020/8, p. 26, para. 17 (Sheeran).

[5] *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*, para. 24.

[6] *Ibid.*

[7] *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)*, para. 168.

communities in Crimea"[8]. Here, the dispute concerns whether the UAE is in breach of its obligations under the Convention through the measures that Qatar alleges discriminate on the basis of "national origin".

8. *Second*, contrary to the UAE's arguments, Qatar has from the outset pleaded its case as one of racial discrimination based on national origin. Specifically, Qatar alleges, *first*, that the UAE's position that it explicitly targets Qataris based on nationality is, taken on its face, sufficient to demonstrate discrimination under the Convention because "national origin" encompasses nationality. *Second*, Qatar alleges that the UAE's measures are also "based on" Qatari national origin in the historical-cultural sense because they directly implicate that group with the purpose and effect of depriving them of their rights on an equal basis. Each of these two legal grounds is independently sufficient to engage the Court's jurisdiction under the Convention.

9. The UAE pretends not to understand this. Dr. Sheeran instead suggests that Qatar's two arguments are "contrary" and cannot be simultaneously considered[9]. On this basis, the UAE, in an attempted "sleight of hand" that is applied with a heavy hand, suggests the Court should read all references in Qatar's pleadings to "national origin" as referring to "nationality"[10] and all references to "Qataris" as "Qatari nationals"[11]. But there is no contradiction, and this is a transparent rewriting of Qatar's Application and pleadings.

10. On Friday, Dr. Sheeran suggested that the Court should look to Qatar's Application to aid in the Court's objective determination of the dispute[12]. We are happy to oblige.

11. Qatar's Application invokes discrimination based on "national origin" and does so repeatedly. For example, I refer the Court to paragraphs 3, 34, 44, 54, 58 to 59, 62 to 63 and 65 to 66[13]. Also contrary to the UAE's arguments[14], Qatar did plead indirect discrimination; for

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[8] *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*, para. 32.

[9] See e.g. CR 2020/8, p. 28, para. 24 (Sheeran).

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

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

[12] CR 2020/8, p. 29, para. 29 (Sheeran).

[13] AQ, pp. 1-2, para. 3; p. 28, para. 34; p. 34, para. 44; pp. 39-40, para. 54; pp. 41-44, paras. 58-59; pp. 45-49, paras. 62-63; pp. 50-52, paras. 65-66.

[14] CR 2020/6, pp. 31-32, para. 22 (Bethlehem); CR 2020/8, pp. 27-29, paras. 22-31 (Sheeran).

example, I refer the Court to paragraphs 6, 30 to 33, 57 and 65 to 66[15]. Qatar, in its first ground for relief, requested that the Court order the UAE to "[i]mmediately cease and revoke the Discriminatory Measures, including but not limited to the directives against 'sympathizing' with Qataris, and any other national laws that discriminate *de jure or de facto* against Qataris *on the basis of their national origin*"[16]. In describing the scope of the UAE's measures, the Application alleges conduct that clearly goes beyond nationality, for example, at paragraphs 6, 30 and 33. In the context of describing the impact of the UAE's measures on the rights of Qataris, Qatar stated, for instance, that they implicate individuals *"simply on the basis that they are Qatari, married to Qataris, the children of Qataris, or otherwise linked to Qatar"*[17].

12. As the Court is well aware, on the same date as its Application, Qatar requested provisional measures. On the screen before you is an excerpt from Qatar's request. I will not take the Court through the full language, but note only that Qatar requested that the Court order the UAE to "cease and desist from any and all conduct that could result, *directly or indirectly*, in any form of racial discrimination against Qatari individuals and entities"[18]. With respect to the Expulsion Order and Travel Bans — measures the UAE insists Qatar says are exclusively based on nationality — Qatar requested measures "suspending operation of the collective expulsion of all Qataris from, and ban on entry into, the UAE *on the basis of national origin*"[19].

13. In its Memorial and Written Statement, Qatar expanded on the underlying facts and evidence, as well as its legal arguments made in its Application that the UAE's measures violate the Convention on the basis of national origin, by establishing that they both expressly target Qataris based on their nationality and directly implicate individuals of Qatari national origin in the historical-cultural sense[20].

14. The UAE also cites statements made by Qatar outside these proceedings referring to the UAE's measures as solely based on nationality, including in Qatar's April 2018 request for

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[15] AQ, p. 3, para. 6; pp. 25-27, paras. 30-33; p. 41, para. 57; pp. 50-52, paras. 65-66.

[16] AQ, p. 51, para. 66; emphasis added.

[17] AQ, p. 3, para. 6; emphasis added; see also AQ, p. 25, para. 30; pp. 26-27, para. 33.

[18] Request for provisional measures of Qatar (RPMQ), p. 13, para. 19 *(a)*, emphasis added; see also RPMQ, p. 13, para. 19 (v); RPMQ, p. 13, para. 19 (vi); RPMQ, p. 13, para. 19 (vii); QRPMQ, p. 13, para. 19 (viii).

[19] RPMQ, p. 13, para. 19 *(a)* (i); emphasis added.

[20] MQ, Chap. III, Sect. I.B; WSQ, Chap. II, Sect. III.

negotiations and its submission to the CERD Committee[21]. There is nothing surprising about this; the UAE repeatedly has sought to justify its measures as being based solely on nationality in its public statements and before the CERD Committee. That Qatar has addressed the UAE on its own terms in those contexts cannot be used to delimit the subject-matter of the dispute. In fact, Qatar has argued before the CERD Committee that persons of Qatari national origin in the historical-cultural sense are a protected group under the Convention[22].

15. Thus, when the UAE states that Qatar's claims, to use Sir Daniel's words, "are self-evidently predicated on nationality"[23], the UAE does so without fidelity to Qatar's claims as presented or the record of evidence before the Court.

B. The UAE mischaracterizes Qatar's claims and the alleged facts

16. I now turn to address briefly three specific respects in which the UAE mischaracterizes Qatar's claims and the alleged facts with respect to "national origin".

17. *First*, last week, we pointed out that Dr. Peterson's report remains unrebutted and noted that the UAE had not addressed in the oral proceedings its position on what "national origin" means[24]. On Friday, the UAE remained circumspect on this question, although Sir Daniel helpfully did confirm the UAE's position that "national origin" references a person's "Qatari heritage"[25], echoing the position taken by the UAE in its prior submissions[26]. So even the UAE's overly restrictive and incorrect understanding of "national origin", when read alongside Dr. Peterson's unrebutted testimony, confirms a distinct Qatari national origin, on the basis of which the Convention prohibits discrimination[27].

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[21] See e.g. CR 2020/8, p. 25, para. 14 (Sheeran); p. 29, para. 30 (Sheeran).

[22] See CERD Committee, "Decision on Jurisdiction of inter-State communication submitted by Qatar against the United Arab Emirates", UN doc. CERD/C/99/3 (adopted 27 Aug. 2019), available at https://undocs.org/CERD/C/99/3, pp. 10-11, para. 50.

[23] CR 2020/8, p. 14, para. 9 (Bethlehem).

[24] CR 2020/7, pp. 39-40, paras. 22-26 (Amirfar).

[25] CR 2020/6, p. 16, para. 17 (Bethlehem).

[26] CR 2020/7, p. 40, para. 26 (Amirfar); see also CR 2018/13, p. 38, para. 19 (Olleson).

[27] CR 2020/7, pp. 39-40, paras. 23-26 (Amirfar); see also WSQ, pp. 79-82, paras. 2.118-2.123; MQ, pp. 131-137, paras. 3.94-3.106.

18. Counsel for the UAE also stated that national origin refers solely to a "subset of individuals who have the nationality of that State"[28]. Sir Daniel based this entirely on a statement from General Recommendation XXIV that "[s]ome States parties fail to collect data on the ethnic or national origin *of their citizens*" — emphasis his[29]. But the full statement refers to the "ethnic or national origin of their citizens *or of other persons living on their territory*"[30]. There is simply no support for the proposition that non-citizens categorically are not protected under the ground of "national origin" — to the contrary, this is directly refuted by the CERD Committee in its General Recommendation XXX[31].

19. The UAE's only other response was to suggest that Qatar's claims are "migrating . . . in the direction towards 'ethnic origin'"[32]. But Qatar has not suggested its case is based on ethnic origin. That there may be overlap between the characteristics of national origin and ethnic origin[33] is unsurprising: Professor Thornberry notes that "the fundamental ambiguity in 'national origin' and 'nationality' is that the terms refer not only to legal nationality or citizenship but also to a concept of community in a spectrum that includes ethnicity"[34]. Whatever the areas of potential overlap, "national origin" clearly is independent from "ethnic origin" as a point of identity and as a protected ground under the Convention, and it is on "national origin" that Qatar bases its claims[35].

20. *Second*, at play in the UAE's oral submissions last week was a mischaracterization of the Convention's legal framework. Dr. Sheeran argues that the Expulsion Order is not based on national origin because it was "targeted at Qatari nationals"[36]. He thus assumes a false requirement of exclusivity: that a measure explicitly framed in terms of nationality *cannot* also be "based on"

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[28] CR 2020/8, pp. 16-17, para. 18 (Bethlehem).

[29] CR 2020/6, pp. 16-17, para. 18 (Bethlehem).

[30] CERD Committee, General Recommendation XXIV concerning Article 1 of the Convention (1999), UN doc. A/54/18, Ann. V, para. 2.

[31] See e.g. CERD Committee, General Recommendation XXX on discrimination against non-citizens, UN doc. CERD/C/64/MSC.11/rev.3 (2005), paras. 5, 12, 24, 25, 31, 38.

[32] CR 2020/8, p. 27, para. 21 (Sheeran).

[33] MQ, p. 128, para. 3.91.

[34] P. Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016), p. 125.

[35] MQ, pp. 127-128, paras. 3.90-3.91; pp. 136-137, para. 3.104; see also WSQ, para. 2.96.

[36] CR 2020/8, p. 25, para. 13 (Sheeran).

national origin[37]. He similarly suggests that Qatar is effectively precluded from arguing that the UAE's measures both target *and* disparately impact persons of Qatari national origin — irrespective of whether the facts alleged and evidence before the Court support both arguments[38]. This is just wrong, of course; parties may and indeed do argue that actions taken constitute both direct and indirect discrimination, due to both purpose and effect[39].

21. In addition, while the UAE acknowledges that the Convention protects against both direct and indirect discrimination[40], Dr. Sheeran suggests, somewhat obliquely, that indirect discrimination under the Convention is limited to cases where a State "disguis[es] its measures of racial discrimination"[41]. He also argues that the Court need only consider which group is "targeted" or "addressed" by the UAE's measures, which the UAE suggests is tested based on the explicit framing of the measure or the UAE's intention to address a protected group[42].

22. Qatar has already demonstrated that a measure may have a disparate impact on a protected group under the Convention, regardless of its express terms or the issuer's intent. I respectfully refer the Court to those points in Qatar's written and oral submissions[43]. The UAE also asserts that "there is no discrimination, whether open or disguised, direct or indirect, ***against a CERD protected group***"[44]. I again refer back to my prior submissions: the UAE cannot supplant the role of the Court as fact-finder on this point, nor can it argue the merits of the case as a basis not to proceed to the merits[45].

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[37] See e.g. CR 2020/8, p. 25, para. 14 (Sheeran); see also p. 22, para. 1.

[38] See CR 2020/8, pp. 28-29, paras. 23-25, 28 (Sheeran).

[39] See e.g. *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. 92, 94; see also Written Statement of Ukraine on the Preliminary Objections of the Russian Federation, pp. 159-160, paras. 297-299; *ibid*., pp. 163-164, paras. 304-305.

[40] CR 2020/8, pp. 28-29, para. 26 (Sheeran); p. 14, para. 10 (Bethlehem).

[41] CR 2020/8, pp. 28-29, para. 26 (Sheeran).

[42] CR 2020/08, pp. 23-24, paras. 9-11 (Sheeran).

[43] MQ, pp. 80-82, paras. 3.11-3.14; pp. 137-138, paras. 3.107-3.108; WSQ, pp. 76-79, paras. 2.112-2.117; CR 2020/7, pp. 41-42, paras. 27-29 (Amirfar); p. 45, para. 40.

[44] CR 2020/8, p. 14, para. 10 (Bethlehem), ***(emphasis in original)***.

[45] CR 2020/7, p. 34, para. 1 (Amirfar); see also *ibid*., pp. 43-44 paras. 35, 37.

23. *Third*, the UAE insists that Qatar's allegations of fact do not support claims falling within the scope of the Convention[46], but makes no attempt to actually engage with those allegations and supporting evidence. In the context of discussing the UAE's Expulsion Order, Dr. Sheeran noted, but did not respond to, the point that "targeting" Qatari nationals necessarily "targets" persons of Qatari national origin in the historical cultural sense due to the factual convergence between the two[47]. The UAE similarly did not contest the disparate impact of the Expulsion Order or Travel Bans on persons of Qatari national origin[48]. Nor did the UAE dispute the evidence demonstrating these measures being enforced against non-Qatari citizens on the basis of their Qatari personal characteristics[49]. The UAE, of course, may contest this evidence at the merits stage, but it cannot pretend it does not exist for purposes of arguing the Court lacks jurisdiction.

24. The UAE also suggests Qatar has "recast" its claim based on the block on Qatari Media[50]. But in fact, Qatar has alleged from the outset that the block interferes with the rights of not only the Qatari entities directly targeted, but also *individuals* of Qatari national origin[51]. As for the Anti-Sympathy Law, the UAE simply doubles down on its argument that it does not exist[52]. This is not taking the allegations of fact as true for purposes of determining the subject-matter of the dispute; this is contesting them, which again, is for the merits[53].

25. Finally, the UAE states that the material in the record cannot sustain a claim of incitement. But it does this by narrowing the record to "three key allegations of fact" allegedly unrelated to nationality or national origin, and failing to engage with any other evidence, including inflammatory statements by UAE officials directed toward the Qatari people[54], the silencing of

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[46] See CR 2020/6, pp. 28-29, para. 10 (Bethlehem); CR 2020/6, p. 48, para. 36 (Sheeran); p. 49, paras. 43, 46; CR 2020/8, pp. 25-27, paras. 13-18 (Sheeran).

[47] CR 2020/8, p.25, para. 13 (Sheeran); see also CR 2020/07, pp. 43-44, para. 36 (Amirfar); see also MQ, paras. 3.101-3.103; WSQ, paras. 2.127-2.128.

[48] MQ, paras. 3.107-3.113; WSQ, paras. 2.119-2.120, 2.126.

[49] See CR 2020/7, p. 44, para. 38 (Amirfar); AQ, para. 33; MQ, paras. 3.111; WSQ, para. 2.125.

[50] CR 2020/8, p. 25, para. 15 (Sheeran).

[51] AQ, p. 47, para. 63; MQ, pp. 45-46, para. 2.42; *ibid*., pp. 57-58, paras. 2.59, 2.61; *ibid*., p. 330, para. 5.164; *ibid*., p. 334, 5.170-5.171; WSQ, pp. 20-21, para. 2.13.

[52] CR 2020/8, p. 26, para. 16 (Sheeran).

[53] CR 2020/7, p. 60, para. 8 (Schrijver); MQ, pp. 41-45, paras. 2.37-2.41.

[54] MQ, pp. 53-55, paras. 2.53-2.55.

speech capable of countering the hate speech against Qataris[55], and even the fact that the 5 June 2017 directive itself branded all "Qatari residents and visitors" as persons who must be banished from the country for "precautionary security reasons"[56]. I repeat, the UAE may challenge this evidence on the merits, but it may not ignore it.

26. Mr. President, honourable Members of the Court, the UAE asks the Court to credit its argument that the Court lacks jurisdiction under the Convention simply because, in the UAE's view, its measures did not "address" a protected group, as a matter of either the UAE's express framing or its intent. But the UAE's argument relies on the seriously distorted version of Qatar's case that the UAE has attempted to present this past week — that is, one exclusively focused on nationality as the subject-matter of the dispute. On that basis, the UAE argues that, should the Court accept its nationality argument, the Court lacks jurisdiction to even consider the allegations and evidence that Qatar has submitted on the point that individuals of Qatari national origin in the historical-cultural sense of the term have been directly implicated and disparately impacted by the UAE's measures.

27. So I end my remarks where I began last Wednesday: the UAE's argument suggests that it — and not the Court — gets to be the final arbiter of whether its conduct falls within the scope of the Convention. That construct leaves to the perpetrator of racial discrimination the determination of whether or not it has complied with the Convention — a construct as bizarre as it is jaded in its view of the efficacy of the Convention.

28. Mr. President, Madam Vice-President, Members of the Court, that concludes my submission. I thank you for your kind attention and ask you to invite Professor Klein to address you next.

Le PRESIDENT : Je remercie Mme Amirfar de son exposé. Je donne à présent la parole à M. Pierre Klein. Vous avez la parole, Monsieur.

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[55] See e.g. MQ, p. 334, para. 5.171.

[56] MQ, p. 133, para. 5.169.

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

II. L'INTERPRETATION DE LA CONVENTION POUR L'ELIMINATION DE TOUTES LES FORMES DE DISCRIMINATION RACIALE CONFIRME QUE LES DISCRIMINATIONS FONDEES SUR LA NATIONALITE SONT SUSCEPTIBLES D'ENTRER DANS SON CHAMP D'APPLICATION *RATIONE MATERIAE*

1. Monsieur le président, Mesdames et Messieurs de la Cour, comme vous venez de l'entendre, ma plaidoirie de ce jour sera donc centrée sur les questions relatives à l'interprétation de la convention pour l'élimination de toutes les formes de discrimination raciale. Avec votre permission, je voudrais revenir plus spécifiquement sur les principaux reproches qui ont été adressés par la Partie adverse en fin de semaine passée à l'approche suivie par le Qatar dans ce domaine.

2. En premier lieu, nos contradicteurs ont fait grief au Qatar de ne pas avoir fait progresser le débat sur les questions liées à l'interprétation de la convention, en affirmant qu'il n'y avait rien de neuf dans les arguments développés de notre côté de la barre la semaine dernière[57]. Forts de cette affirmation, nos contradicteurs ont cru pouvoir se limiter à vous renvoyer à leurs écritures, comme ils l'avaient déjà fait il y a une semaine, en prétendant que tous les arguments avancés par le Qatar y avaient été rencontrés. Malheureusement, cette présentation des choses a autant à voir avec la réalité que la version tronquée des faits qui se trouvent à la base de la présente instance qui vous a été livrée par les Emirats arabes unis. Pour rappel, la seule pièce écrite qui a été présentée à ce jour par la Partie adverse, ce sont ses exceptions préliminaires déposées le 29 avril 2019, soit quatre jours seulement après le dépôt du mémoire du Qatar. Les Emirats ont ainsi délibérément choisi de ne pas répondre adéquatement, dans l'exposé écrit déposé à l'appui de leurs exceptions préliminaires, à l'argumentation développée par le Qatar dans son mémoire, tout comme ils ont choisi de ne pas prendre en compte les éléments de preuves présentés par le Qatar à l'appui de cette argumentation. Et cette pièce de procédure ne pouvait, par définition, pas répondre aux arguments complémentaires avancés par le Qatar dans son exposé écrit sur les exceptions préliminaires, déposé, quant à lui, le 30 août 2019. L'argumentation écrite produite par la Partie adverse sur les

[57] CR 2020/8, p. 17, par. 19 (Bethlehem).

questions d'interprétation est donc très largement unilatérale, et son argumentation orale à peu près inexistante.

3. Parmi les rares questions qu'ils ont daigné aborder à ce titre vendredi passé, nos contradicteurs sont revenus sur la pertinence du recours à divers instruments régionaux de protection des droits de la personne pour éclairer le sens des termes «origine nationale» dans la convention. L'exercice serait, selon eux, inapproprié pour trois raisons.

4. Premièrement, les Emirats soutiennent que les clauses prohibant la discrimination, que l'on trouve dans les textes en cause, seraient non limitatives, dans le sens où d'autres motifs que ceux qui y sont expressément énoncés pourraient également tomber sous le coup de la prohibition de la discrimination[58]. Cette observation est tout à fait exacte, mais elle est sans la moindre pertinence pour la question qui nous intéresse. Lorsque la Cour européenne des droits de l'homme, dans l'arrêt auquel je me suis référé la semaine passée, examine la possibilité d'une discrimination au préjudice du requérant «on grounds of his national origin, namely his Bulgarian nationality»[59], c'est bien sa compréhension du concept d'origine nationale qu'elle énonce. C'est difficile d'être plus pertinent que cela et il n'y a donc rien d'«imparfait»[60] dans la lecture que fait le Qatar de cette jurisprudence.

5. Deuxièmement, nos contradicteurs insistent à nouveau sur le fait que les Emirats arabes unis ne sont pas parties aux instruments en cause[61]. Mais l'on peine à voir en quoi ceci aurait la moindre importance. Pas plus que les Emirats, la Guinée ou la République démocratique du Congo ne sont parties à la convention européenne des droits de l'homme. Cela n'a pourtant en rien empêché votre Cour de se référer à la jurisprudence de la Cour européenne pour éclairer la portée d'une disposition du Pacte relatif aux droits civils et politiques dans l'affaire *Diallo*, comme je l'ai rappelé précédemment[62].

6. Troisièmement, et de manière plus générale, nos contradicteurs réfutent l'idée que la conception de la discrimination qui s'est développée sur la base du droit international général

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[58] CR 2020/8, p. 13, par. 6 (Bethlehem).

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

[60] CR 2020/8, p. 13, par. 6 (Bethlehem).

[61] CR 2020/8, p. 13, par. 6 (Bethlehem).

[62] CR 2020/7, p. 27-28, par. 20 (Klein).

puisse s'avérer pertinente dans le cadre de la convention, au motif qu'il s'agit d'un instrument spécialisé, centré sur la seule discrimination raciale[63]. On ne peut pourtant que constater, à cet égard, que les éléments de définition de la discrimination retenus par le Comité CERD sont exactement les mêmes que ceux qui trouvent application dans le cadre d'instruments régionaux ou en droit international général : l'absence de proportionnalité et de légitimité des mesures en cause y joue un rôle central[64].

7. Un autre point d'interprétation sur lequel nos contradicteurs ont consenti à revenir est la raison pour laquelle les auteurs de la convention ont incorporé dans l'article premier, le paragraphe 2, dans la formulation qu'on lui connaît. La raison, selon eux, en est simple : il se serait seulement agi d'«éviter les doutes», sachant que la clause ne ferait rien d'autre que préciser le champ d'application de la convention[65]. Mais justement, s'il a fallu préciser la chose, en excluant du champ d'application de la convention les différences de traitement entre ressortissants et non-ressortissants d'un Etat, c'est bien parce que les discriminations fondées en apparence sur la nationalité étaient comprises comme susceptibles d'entrer dans ce champ d'application. L'accent mis par les Emirats sur ce point ne contribue donc en rien à étayer leur thèse. Et la lecture qu'ils donnent de cette clause va par ailleurs à l'encontre de la manière dont l'articulation entre les différentes composantes de l'article premier est présentée par le Comité CERD dans la recommandation générale n° XI[66].

8. Quant à l'argument selon lequel il ne s'agissait ici que d'«éviter les doutes» éventuels, il est plutôt singulier et, une fois encore, cette affirmation n'est appuyée par aucune source. Cet argument va surtout à l'encontre d'un principe qui est, lui, particulièrement bien établi, celui de l'effet utile. Lorsque les auteurs d'un traité y incorporent une clause, ce n'est pas pour «éviter les doutes», c'est parce que son inclusion leur est apparue nécessaire.

9. C'est du reste exactement ce que révèle l'historique de la disposition, comme M^e^ Amirfar l'a très clairement montré la semaine passée. Que l'amendement franco-américain qui a fait l'objet

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[63] CR 2020/8, p. 13, par. 6 (Bethlehem).

[64] Voir, par exemple, Nations Unies, Comité pour l'élimination de la discrimination raciale, recommandation générale n° XXX concernant la discrimination contre les non-ressortissants, doc. CERD/C/64/Misc.11/rev.3 (2005) ; MQ, vol. IV, annexe 109.

[65] CR 2020/8, p. 17, par. 20 (Bethlehem).

[66] Voir MQ, vol. I, p. 100, par. 3.45.

de l'attention des deux Parties la semaine dernière ait été repoussé ou retiré, le résultat est le même : l'idée d'exclure la nationalité du concept d'origine nationale, à laquelle tendait cet amendement, a été rejetée. Contrairement à ce que nos contradicteurs semblent penser[67], oui, l'amendement qui a débouché sur la formulation finale de l'article premier était bien un amendement «de compromis». Le texte que vous avez sous les yeux le confirme de manière on ne peut plus claire. Et, oui, ce compromis a permis de rassurer les représentants français et américains quant au fait que la convention n'empêcherait pas les Etats parties de mettre en œuvre des différences de traitement entre leurs ressortissants et ceux d'autres Etats. Ceci tout en rassurant également ceux qui craignaient qu'une définition trop restrictive des termes «origine nationale» limite indûment le champ d'application de la convention. C'est bien cela, le sens du terme «compromis». Et c'est à la lumière de cet historique que le sens du paragraphe 2 de l'article premier doit être compris.

10. Je terminerai ces brèves observations relatives à la prise en compte du contexte de l'article premier, paragraphe 1, de la convention aux fins de l'interprétation des termes «origine nationale» en attirant votre attention sur le fait que nos contradicteurs ont gardé un silence complet sur la question du sens qu'il fallait donner à l'inclusion, dans l'article premier, du paragraphe 3. Pour rappel, cette disposition prohibe, dans certains domaines, les discriminations entre différentes catégories de non-ressortissants. Comme je l'ai exposé la semaine passée, cette clause représente pourtant un autre élément crucial de contexte qu'il convient de prendre en compte aux fins de l'interprétation des termes «origine nationale» dans le paragraphe 1[68].

11. Au cours de leur second tour de plaidoiries, nos contradicteurs ont également renouvelé leurs attaques contre la pratique du Comité CERD. Ils ont concentré leurs critiques sur la recommandation générale n° XXX concernant la discrimination contre les non-ressortissants, ainsi que sur la décision du mois d'août 2019 par laquelle le Comité a déclaré que la plainte du Qatar entrait dans le champ de la convention.

12. Pour ce qui est du premier de ces actes, la recommandation générale n° XXX, je rappelle que le Comité y a énoncé qu'

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[67] CR 2020/8, p. 17-18, par. 21 (Bethlehem).

[68] Voir aussi MQ, vol. I, p. 97-99, par. 3.39 et suiv.

> «[a]ux termes de la Convention, l'application d'un traitement différent fondé sur le statut quant à la citoyenneté ou à l'immigration constitue une discrimination si les critères de différenciation, jugés à la lumière des objectifs et des buts de la Convention, ne visent pas un but légitime et ne sont pas proportionnés à l'atteinte de ces buts»[69].

13. Selon la Partie adverse, ce texte ne devrait pas se voir reconnaître de poids par la Cour dans le processus de détermination du champ d'application de la convention, essentiellement parce qu'il ne peut être considéré comme l'expression de la position des Etats parties sur ce point[70]. Il devrait en particulier en être ainsi, d'après nos contradicteurs, parce que très peu d'Etats ont participé au débat thématique qui a précédé l'adoption de cette recommandation générale et que les Etats parties n'ont pas eu l'occasion de commenter le projet préparé par le Comité avant qu'il soit adopté[71]. Mais rien dans la convention, dans les règles de procédure du Comité, ou plus généralement d'ailleurs dans la pratique des organes de protection des droits de la personne du système des Nations Unies, n'impose qu'une telle opportunité de présenter leurs commentaires soit offerte aux Etats parties. De plus, le rapport du Comité CERD sur ses soixante-quatrième et soixante-cinquième sessions fait état des informations qui lui ont été communiquées par les Etats parties sur la question des non-ressortissants et de la discrimination raciale, informations qui ont été exploitées par le Comité dans ses travaux sur ce sujet[72]. Rien, dans les documents pertinents, ne vient donc confirmer une prise de distance des Etats parties par rapport à la position adoptée par le Comité dans ce texte. Il est d'ailleurs éminemment symptomatique que nos contradicteurs ne soient pas en mesure de renvoyer à la position d'un quelconque Etat qui aurait exprimé son opposition au contenu de la recommandation générale n° XXX. Pas un seul, que ce soit dans leur argumentation écrite ou dans leurs plaidoiries[73].

14. En réalité, la pratique des Etats parties met au contraire en évidence une attitude largement favorable à la position exprimée par le Comité dans ce texte. En témoigne en particulier

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[69] Nations Unies, Comité pour l'élimination de la discrimination raciale, recommandation générale n° XXX concernant la discrimination contre les non-ressortissants, doc. CERD/C/64/Misc.11/rev.3 (2005) ; MQ, vol. IV, annexe 109.

[70] CR 2020/8, p. 19, par. 24 (Bethlehem).

[71] *Ibid.*

[72] Nations Unies, rapport du Comité pour l'élimination de la discrimination raciale, soixante-quatrième et soixante-cinquième sessions, doc. A/59/18 (2004), p. 91, par. 462-464.

[73] Voir en particulier EPEAU, p. 71-73, par. 130-134.

le fait que les Etats parties ont répondu sans difficulté à la demande formulée par le Comité au paragraphe 5 de la recommandation générale n° XXX de «faire figurer, dans leurs rapports … des données socioéconomiques sur les non-ressortissants soumis à leur juridiction» et de «fournir des informations complètes sur la législation relative aux non-ressortissants»[74].

15. Alors que nos contradicteurs tentent de présenter le Comité CERD comme une sorte d'électron libre, dont le travail de «gardien de la convention» se ferait en dehors de toute concertation avec les Etats parties, la réalité est tout autre. Les activités du Comité comprennent un dialogue suivi avec les parties à la convention, entre autres par le biais de rencontres régulières avec ces dernières. Et c'est bien pourquoi la pratique constante du Comité qui, depuis plusieurs décennies maintenant, considère les discriminations fondées sur la nationalité comme susceptibles d'entrer dans le champ d'application de la convention, mérite de se voir reconnaître un poids tout particulier dans la présente affaire.

16. Il n'y a donc aucun élément qui devrait amener la Cour à s'écarter ici de la position qu'elle a adoptée à l'égard des interprétations retenues par ***les*** organes chargés de la supervision des traités de protection des droits fondamentaux conclus sous les auspices des Nations Unies, des interprétations auxquelles vous avez estimé «devoir accorder une grande considération»[75]. Ceci vaut tout autant pour les positions adoptées en termes généraux par le Comité, dans la recommandation générale n° XXX en particulier, que pour les conclusions spécifiques qu'il a atteintes dans le cadre de l'examen de la plainte du Qatar contre les Emirats arabes unis en août 2019. Même si le raisonnement sur lequel s'est basé le Comité pour prendre cette décision est succinct, la Partie adverse n'a pas été en mesure de mettre en évidence un quelconque élément qui devrait amener à conclure que ce raisonnement est incorrect. Tout au contraire, il s'inscrit dans le droit fil de la pratique du Comité en la matière, une pratique dont je viens de rappeler la constance et l'abondance.

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[74] Voir, par exemple, Nations Unies, Kenya, cinquième à septième rapports périodiques des Etats parties attendus en 2014, doc. CERD/C/KEN/5-7 (28 janvier 2016), par. 14 ; Nouvelle-Zélande, vingt et unième et vingt deuxième rapports périodiques des Etat parties attendus en 2015, doc. CERD/C/NZL/21-22 (20 avril 2016), par. 7 et 133 ; Algérie, vingtième et vingt et unième rapports périodiques des Etats parties attendus en 2015, doc. CERD/C/DZA/20-21 (23 août 2016), par. 48 ; République de Corée, dix-septième à dix-neuvième rapports périodiques des Etats parties attendus en 2016, doc. CERD/C/KOR/17-19 (17 novembre 2017), tableau 8 ; Islande, vingt et unième à vingt-troisième rapports périodiques des Etats parties attendus en 2013, doc. CERD/C/ISL/21-23 (29 août 2018), par. 21-22 et 83-109.

[75] *Ahmadou Sadio Diallo (République de Guinée c. République démocratique du Congo), fond, arrêt, C.I.J. Recueil 2010 (II)*, p. 664, par. 66.

17. Je voudrais encore dire un mot, à ce sujet, de la présentation particulièrement trompeuse qui vous a été faite par nos contradicteurs de la manière dont la Cour a traité les conclusions du Comité contre la torture dans l'affaire *Belgique c. Sénégal*. Vous avez ainsi entendu vendredi dernier que la Cour aurait jugé que le Comité contre la torture se serait «trompé» dans son traitement de l'affaire Habré[76]. Rien n'est moins vrai. Dans son arrêt, la Cour a montré que sa compréhension de l'application *ratione temporis* de la convention contre la torture était conforme à la jurisprudence du Comité contre la torture. Elle a simplement relevé que la question spécifique qui se présentait à elle n'avait pas été soulevée devant le Comité dans son examen de la requête mettant en cause les agissements de M. Habré, et que le Comité ne s'était «pas penché d'office sur cette question»[77]. Ce précédent ne vient donc nullement remettre en cause l'approche de la Cour à l'égard des prononcés des organes de protection des droits fondamentaux du système des Nations Unies. Il la conforte au contraire.

18. Enfin, nos contradicteurs ont encore réitéré vendredi dernier l'argument selon lequel le volet de la réclamation du Qatar relatif aux mesures de censure prises à l'encontre de plusieurs médias qatariens échappait en tout état de cause à la compétence de la Cour. Il devrait en aller ainsi, selon eux, en raison du fait que les personnes morales n'entreraient pas dans le champ d'application de la convention[78]. Ils avaient précédemment affirmé que cette conclusion s'imposait dès lors que le terme «institutions», qui figure dans l'article 2 de la convention, consignant l'engagement des Etats parties à «ne se livrer à aucun acte ou pratique de discrimination raciale contre des personnes, groupes de personnes ou institutions», ne viserait que les institutions publiques[79]. Mais, une fois encore, rien dans les travaux préparatoires ne conforte cette lecture restrictive de l'article 2, paragraphe 1[80]. De plus, comme le Qatar l'a montré dans ses écritures, le fait que des personnes morales, publiques ou privées, peuvent être considérées comme victimes de

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[76] CR 2020/8, p. 18, par. 23 (Bethlehem).

[77] *Questions concernant l'obligation de poursuivre ou d'extrader (Belgique c. Sénégal), arrêt, C.I.J. Recueil 2012 (II)*, p. 458, par. 101.

[78] CR 2020/8, p. 25-26, par. 15 (Sheeran).

[79] CR 2020/6, p. 48-49, par. 41-42 (Sheeran).

[80] ***Voir Nations Unies, Assemblée générale, Dix-huitième session, Documents officiels, Troisième Commission, ONU doc. A/C.3/SR.1214 (27 septembre 1963), par. 3-4.***

violations de la convention a été confirmé par le Comité CERD lui-même[81]. Une fois encore, ce sont des arguments que nos contradicteurs ont laissés sans réponse. Ces éléments confirment pourtant on ne peut plus clairement que le volet de la demande du Qatar qui concerne les mesures discriminatoires prises par les Emirats arabes unis à l'encontre de différents médias du Qatar n'est en rien exclu du champ de compétence de la Cour.

19. En conclusion, Monsieur le président, Mesdames et Messieurs de la Cour, on ne peut que constater que nos contradicteurs se sont limités à une présentation particulièrement impressionniste de leur interprétation du concept d'origine nationale, en vous livrant ici et là quelques bribes éparses de leur argumentation sur ce point. La Partie adverse critique l'interprétation de la notion d'origine nationale comme incluant la nationalité donnée par les organes de contrôle institués par les instruments internationaux de protection des droits de la personne. Elle critique la pratique du Comité CERD, qui confirme l'incorporation dans le champ de la convention des discriminations opérées à l'encontre des non-ressortissants. Elle critique encore l'argumentation du Qatar basée sur l'importance de la compréhension adéquate de la notion de discrimination. Mais elle s'avère pour autant totalement incapable de fonder la lecture restrictive de la convention qu'elle promeut sur la moindre source, qu'elle soit jurisprudentielle, doctrinale ou liée à la pratique des Etats, à l'exception de quelques références par ailleurs éminemment contestables aux travaux préparatoires.

20. Je vous remercie, Monsieur le président, Mesdames et Messieurs de la Cour, pour votre bienveillante attention. Je voudrais vous demander, Monsieur le président, de bien vouloir maintenant passer la parole à mon collègue M[e] Lawrence Martin.

The PRESIDENT: I thank Professor Klein for his statement and I give the floor to Mr. Lawrence Martin. You have the floor.

Mr. MARTIN:

[81] Voir, par exemple, Nations Unies, *Union turque de Berlin-Brandebourg c. Allemagne*, communication n[o] 48/2010, opinion, CERD/C/82/D/48/2010 (26 février 2013), par. 11.1-11-4.

III. THE SECOND PRELIMINARY OBJECTION SHOULD BE REJECTED

1. Mr. President, Madam Vice-President, distinguished Members of the Court, good afternoon. My task today, as it was on Wednesday, is to explain why the UAE's second preliminary objection should be rejected.

A. Qatar satisfied the negotiation requirement

2. Professor Forteau stated last Friday that under Article 22 of CERD, a party "must *first* attempt to settle the dispute amicably and only *then* refer it to the Court"[82]. We agree. This is exactly what Qatar did. No amount of hand-waving by our friends on the other side should distract you from that simple conclusion.

3. There is no doubt that Qatar made a genuine attempt to negotiate and that, when Qatar seised the Court in June 2018, there was no reasonable possibility of settling the dispute by negotiations. On Friday, Professor Forteau emphasized the importance of context. He said "context is decisive"[83].

4. Here again, we agree. But, as the Court itself observed in the *Civil Aviation* cases[84], the undisputed context here shows that the UAE was unwilling to talk with Qatar on any subject unless and until Qatar complied with the 13 demands issued by the UAE and others. Just by way of one example among many, the record shows that in February 2018, Qatar's Deputy Prime Minister and Minister for Foreign Affairs addressed the United Nations Human Rights Council, noting the many human rights violations against the Qatari people, and calling on the Council to do all it could "to put an end to the human rights violations resulting from these unilateral ***coercive*** discriminatory measures"[85]. In his response, the Permanent Representative of the UAE steadfastly insisted that the UAE would "continue to exercise [its] sovereign right to boycott the Government of Qatar"[86].

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[82] CR 2020/8, p. 39, para. 18 (Forteau); emphasis in the original.

[83] CR 2020/8, p. 32, para. 6 (Forteau).

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

[85] Permanent Mission of the State of Qatar to the United Nations Office in Geneva, Switzerland, Statement of H.E. Deputy Prime Minister of Foreign Affairs at the 37th Human Rights Council (25 Feb. 2018), http://geneva.mission.qa/en/news/detail/2018/02/28/statement-of-he-deputy-prime-minister-of-foreigh-affairs-ta-the-37th-human-rights-council; MQ, Vol. II, Ann. 67.

[86] "Arab Quartet responds to Qatar's remarks at the UN Human Rights Council", *Al Arabiya English* (28 Feb. 2018); MQ, Vol. II, Ann. 26.

5. Under the circumstances, Qatar considers it hypocritical of the UAE to argue that it did not comply with the negotiation requirement when the UAE refused to engage with Qatar on any subject at any time. The UAE's new-found openness in September 2020 does not speak to or alter the situation in June 2018.

6. In this respect, I would be remiss if I did not point out that in its July 2018 Order on provisional measures, the Court itself found that Qatar had satisfied the negotiation requirement. The Court first took note of the fact that "issues relating to the measures taken by the UAE in June 2017 have been raised by representatives of Qatar on several occasions in international fora, including at the United Nations, in the presence ***of representatives*** of the UAE"[87]. About Qatar's April 2018 letter inviting negotiations, the Court then stated:

> "The Court considers that the letter contained an offer by Qatar to negotiate with the UAE with regard to the latter's compliance with its substantive obligations under CERD. In the light of the foregoing, and given the fact that the UAE did not respond to that formal invitation to negotiate, the Court is of the view that the issues raised in the present case had not been resolved by negotiations at the time of the filing of the Application."[88]

7. The Court's language is unequivocal. It may be that this decision was made in the context of deciding that the Court had prima facie jurisdiction, but the UAE has not pointed to any good reason to disturb that clear decision now.

8. On Friday, Professor Forteau spent a great deal of time trying to explain the UAE's refusal to respond to Qatar's letter largely by arguing that "in this particular context, the Articles 11 to 13 procedure *absorbs* the precondition of negotiations"[89]. But the Court does not need to be reminded that negotiation and conciliation are listed separately in Article 33 of the Charter and are fundamentally different kinds of procedures.

9. The UAE itself has previously insisted on these very real differences. In its Preliminary Objections, for example, it argued that "the procedures expressly provided for in Articles 11-13 of the CERD are *not* merely another form of direct negotiation . . . This is demonstrated by the fact of

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[87] *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. 420, para. 37.

[88] *Ibid.*, p. 420, para. 38.

[89] CR 2020/8, p. 37, para. 13 *(d)* (Forteau); emphasis added.

these procedures being listed alongside, but separately from, 'negotiation' in Article 22 of the CERD."[90]

10. In the context of stating that the UAE received Qatar's letter inviting negotiations and its CERD communication within a matter of days of each other, Professor Forteau also argued that "there was 'no reason for the UAE not to believe that the 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].

11. With respect, this argument does not make any sense. Although the UAE only received Qatar's Communication to the CERD Committee on 7 May 2018, the Communication was dated 8 March 2018, nearly a month and a half *before* Qatar's request for negotiations to the UAE. As a matter of basic logic, the UAE could not seriously have believed that a response to that letter was not necessary because Qatar meant for the earlier CERD Communication to supplant the later request for negotiations. In any event, if the UAE had any doubt on the matter, it could have asked. But that, of course, would have been inconsistent with its policy of not communicating with Qatar in any way, shape or form.

12. The UAE also argued on Friday that "Qatar never subsequently reiterated its offer to negotiate of 25 April, nor did it follow up on it"[92]. The onus was not on Qatar, however. I would remind the UAE what its own counsel said at the hearings in the *Civil Aviation* cases in December. To paraphrase: a State that receives a request for negotiations will no doubt evaluate carefully whether or not to engage, knowing that if it does not, the consequence will be that the dispute can then be submitted to the Court[93].

13. We heard no response to this on Friday. The UAE is no doubt aware that its arguments before you now cannot be squared with its arguments before you in December.

14. The last point I will make today about Qatar's compliance with the negotiation requirement is to respond to the UAE's argument that Qatar's decision to refer the matter back to

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[90] POUAE, Vol. I, para. 160; emphasis in the original.

[91] CR 2020/8, pp. 35-36, para. 12 *(b)* (Forteau); emphasis omitted.

[92] CR 2020/8, p. 36, para. 12 *(d)* (Forteau).

[93] CR 2019/14, p. 25, para. 19 (Olleson).

the CERD Committee in October 2018 "confirms that even after the expiry of the 15-day ultimatum contained in its 25 April offer to negotiate, Qatar took the view that a friendly settlement remained possible and was therefore not at an impasse at the time the matter was referred to the Court"[94].

15. There are several obvious responses to this assertion. *First*, whatever Qatar may have done before the CERD Committee is irrelevant to the wholly separate — dare I say "alternative" — negotiation requirement.

16. *Second*, whatever Qatar may have done in October 2018 is also irrelevant to its assessment of the situation more than three months earlier, in June 2018, when the Court was seised of the dispute.

17. *Third*, and in any event, Qatar has made clear why it did what it did. Confronted with a human rights crisis — a crisis that led the Court to indicate provisional measures, no less — Qatar understandably was seeking to use any and all means at its disposal to address this pressing situation. Confronted with the UAE's refusal to negotiate and multi-faceted jurisdictional objections at the first hearing on provisional measures — where the UAE objected on the basis of *lis pendens*, *electa una via*, exhaustion of local remedies, among others — Qatar was also acting to protect its rights.

B. Article 22 does not preclude parallel procedures

18. Mr. President, I turn now to the UAE's argument that Article 22 somehow precludes the maintenance of parallel procedures. Sir Daniel was the first to mention the issue on Friday. He argued that all the cases from your jurisprudence that Qatar cited to show that parallel procedures are permissible are irrelevant because in all those cases the parties allegedly expressly consented to such procedures, which, he said, is not the case here[95].

19. This argument assumes its own conclusion. That is, it assumes that the UAE's reading of Article 22, pursuant to which parallel procedures are prohibited, is correct. We say that is wrong and Article 22 and other provisions of CERD I will address shortly do, in fact, permit parallel

[94] CR 2020/8, p. 38, para. 13 *(f)* (Forteau).

[95] CR 2020/8, p. 20, paras. 29-30 (Bethlehem).

proceedings. As such, if consent is needed, the UAE gave that consent when it acceded to CERD in 1974.

20. Moreover, the Court's tolerance of parallel procedures is not limited only to the procedures listed in Article 33, paragraph 1, of the Charter. The Court, for example, has consistently exercised its jurisdiction even when the Security Council is seised of a matter. In the *Hostages* case, for example, the Court stated:

> "Whereas Article 12 of the Charter expressly forbids the General Assembly to make any recommendation with regard to a dispute or situation while the Security Council is exercising its functions in respect of that dispute or situation, no such restriction is placed on the functioning of the Court by any provision of either the Charter or the Statute of the Court. The reasons are clear. It is for the Court, the principal judicial organ of the United Nations, to resolve any legal questions that may be in issue between parties to a dispute; and the resolution of such legal questions by the Court may be an important, and sometimes decisive, factor in promoting the peaceful settlement of the dispute."[96]

21. In our view, similar reasoning applies here. CERD contains no express restriction on the functioning of the Court while a matter is before the CERD Committee. Unlike the Conciliation Commission, it is for the Court to resolve disputed legal issues, while, to use the UAE's own words, the Commission's "role is conciliatory and recommendatory"[97].

22. Sir Daniel also cited to UNCLOS for the proposition that conciliation and judicial settlement are somehow incompatible. But UNCLOS stands for no such thing. In the particular context of that convention, conciliation is expressly made a back-up form of compulsory dispute settlement for States that elect to make declarations under Article 298 opting out of binding dispute settlement for certain categories of cases. That tells us nothing about the situation here.

23. The invocation of UNCLOS is also inapposite for another reason as well. Unlike CERD, that convention actually has an express *electa una via* provision. In particular, Article 281 provides that when parties have agreed to settle a dispute by a peaceful means of their own choice, "the procedures provided for in [Part XV] apply only where no settlement has been reached by recourse to such means and the agreement between the parties does not exclude any further procedure"[98].

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[96] *United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran), Judgment, I.C.J. Reports 1980*, p. 22, para. 40.

[97] Note Verbale from the Permanent Mission of the United Arab Emirates to Members of the Committee on the Elimination of Racial Discrimination (17 Sept. 2019), "UAE views on Decisions of the CERD Committee", p. 2.

[98] United Nations Convention on the Law of the Sea (concluded 10 Dec. 1982, entered into force 16 Nov. 1994) (UNCLOS), United Nations, *Treaty Series* (*UNTS)*, Vol. 1833, Part 3, Art. 281.

24. Professor Forteau took the baton from Sir Daniel on the Article 22 issue. He was conspicuously brief this time around. He curiously argued that "in [my] pleading on Wednesday, [I] was strangely silent on the text and régime of Article 22"[99]. If that is true, it is only because, as I said on Wednesday[100], Professor Forteau himself had nothing to say on Monday about the text of Article 22 and how exactly it supports the UAE's conclusion. His argument on Monday, as it was on Friday, was long on assertion and short on demonstration.

25. Professor Forteau also accused me of being "simplistic"[101] in my insistence on the Court's ruling in *Ukraine* v. *Russia* that the Article 22 preconditions are "alternative". There are times, however, when things really are quite simple. This is one of those times.

26. The Court's finding that Article 22 creates "alternative" preconditions is decisive. This is the law. Words have meaning, and they have consequences. Stating that the preconditions are "alternative" can only mean that only one of them has to be satisfied for a party to have recourse to the Court. That happened here for the reasons Qatar has explained.

27. Even as Professor Forteau insisted that the text of Article 22 somehow prohibits these Court proceedings from running in parallel with the CERD procedures, he never bothered to show you the actual text of Article 22. It is on the screen now. I do not need to read it for you; the Court knows it well. But I ask you, where is the prohibition the UAE speaks of? Not in this text. Article 22 looks nothing like Article IV of the Pact of Bogotá, the actual text of which the UAE dared not address on Friday. Nor does it look anything like Article 281 of UNCLOS.

28. In fact, other provisions of CERD make clear that it is perfectly possible for the CERD procedures to run in tandem with other procedures. In particular, Article 11 (2) states that within six months of an initial communication, a State may refer the matter again to the Committee if "the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations *or by any other procedure open to them*"[102]. This language makes it absolutely *[inaudible]*.

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[99] CR 2020/8, p. 39, para. 15 (Forteau).

[100] CR 2020/7, p. 54, para. 18 (Martin).

[101] CR 2020/8, p. 32, para. 5 (Forteau).

[102] International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 Dec. 1965, entered into force 4 Jan. 1969), *UNTS*, Vol. 660, p. 195, Art. 11 (2); emphasis added.

The PRESIDENT: Mr. Martin, Mr. Martin! If you can hear me: could you please pause for a minute because the audio is breaking.

Mr. MARTIN: Yes, Mr. President?

The PRESIDENT: Yes, if you could pause for a minute so that we can check the technical issues that make the audio break.

Mr. MARTIN: Of course, Mr. President.

The PRESIDENT: Maybe you can repeat now your last sentence and then we will see whether it is working. Can you read again your last sentence? Go ahead, Mr. Martin.

Mr. MARTIN: Okay, *[inaudible]*. Yes, the UAE's interpretation would be inconsistent *[inaudible]*.

The PRESIDENT: No, no.

Mr. MARTIN: Were you able to hear *[inaudible]*?

The PRESIDENT: No, no, there is still a problem. I think we are having some technical difficulties. If we can pause for a few minutes, then . . .

Mr. MARTIN: Are you able to hear *[inaudible]*?

The PRESIDENT: Just wait for a minute and we will see if the technicians can sort out these difficulties.

The Court adjourned from 4.10 p.m. to 4.25

The PRESIDENT: Please be seated. The sitting is resumed. I believe that the technical difficulties have been resolved, so I will give the floor to Mr. Martin to continue his statement. You have the floor.

Mr. MARTIN: Thank you, Mr. President, and my appreciation for your patience. If I might trouble you simply to ask where I began to be garbled so that I pick up at the appropriate point.

The PRESIDENT: It is a bit difficult for me to say, but I think that you were in paragraph 45 or 46 of your statement.

Mr. MARTIN: Okay.

The PRESIDENT: Forty-eight I am told: 48.

Mr. MARTIN: Okay. I will begin then where I hope is an appropriate non-repetitive ***spot***. And my apologies, but thank you.

28. In fact, other provisions of CERD make clear that it is perfectly possible for the CERD procedures to run in tandem with other procedures. In particular, Article 11 (2) states that within six months of an initial communication, a State may refer the matter again to the Committee if "the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations *or by any other procedure open to them*"[103]. This language makes it absolutely clear that there is nothing remotely preclusive about triggering the procedures provided for in CERD.

29. The UAE's interpretation would be inconsistent with the object and purpose of CERD identified by the Court in *Ukraine* v. *Russia*: that is, the "prompt[]" elimination of racial discrimination[104]. Requiring Qatar to wait until the CERD procedures are exhausted would only impose wholly unwarranted and inappropriate delay.

30. At the end of the day, the UAE is not really making a legal argument, much less one based on the text of Article 22. The argument it is really making is a policy argument based on its own very ***peculiar*** conception of judicial economy. In the UAE's view, the Court should not get involved in this dispute while another process is ongoing. But there is absolutely nothing in the

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[103] International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 Dec. 1965, entered into force 4 Jan. 1969), *UNTS*, Vol. 660, p. 195, Art. 11 (2); emphasis added.

[104] *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Preliminary Objections, Judgment of 8 November 2019*, para. 103.

nearly one-hundred-year jurisprudence of this Court or its predecessor that might support that approach. In fact, the Court's constant jurisprudence is very much to the contrary.

31. Mr. President, Madam Vice-President, distinguished Members of the Court, thank you again for your gracious attention and your tolerance, even in the midst of these technical difficulties. May I ask that you invite Mr. Lowe to address you next?

The PRESIDENT: I thank Mr. Martin for his statement. And I give the floor to Prof. Vaughan Lowe. You have the floor.

Mr. LOWE:

IV. CONCLUDING OBSERVATIONS

1. Thank you, Mr. President. Mr. President, Madam Vice-President, Members of the Court: it is a privilege to appear again before the Court and an honour to have been entrusted with the presentation of this part of Qatar's case.

2. At this stage in a case, everyone tends to ask the same question: what have we actually learned from this hearing?

3. There have been many detailed points made but what we carry away from the hearing are three main points.

A. National origin

4. First, on the question of "national origin": the UAE has not put forward — and does not intend to put forward — any evidence or arguments to contradict our expert evidence, which is that Qataris are a protected group under the Convention by virtue of their distinct national origin.

5. The April 2019 report of Dr. John Peterson on "national origins and national identity in Qatar", in Volume VI of Qatar's Memorial, concludes in relation to "[t]he Existence of a Distinct Qatari Identity or National Origin" that "[w]hile Qatari national identity shares the Arab Muslim tribal ethos with its Gulf neighbors, it is distinct, centered on these elements of shared Qatari heritage or descent, historical ties, and shared national myths"[105].

[105] MQ, Vol. VI, Ann. 162, expert report of Dr. J. E. Peterson, pp. 21-22.

6. The UAE has submitted no contrary evidence. It has offered no critique of Dr. Peterson's analysis or reasoning. It asks that you take its counsel's word for it that there is no such thing as a distinct Qatari national origin[106].

7. That is not an adequate response to evidence put before the Court.

8. The UAE has expressly said that "this falls to be determined by reference to the material before the Court. It is not a question of the evidence still to come."[107] Though the UAE said little, you have heard its last word on the matter.

9. Why then does the UAE say that the Court should not proceed to hear Qatar's allegations that the UAE is discriminating against Qataris on the basis of their national origin? The UAE gives only one reason: that this is not Qatar's pleaded case.

10. It *is* Qatar's pleaded case. As Ms Amirfar explained in detail, it is set out in the Application, and in each of Qatar's subsequent written pleadings. There are dozens of references, which one can locate by a simple word search[108]. Qatar has consistently argued that the UAE's measures discriminated against Qataris on the basis of their national origin.

11. Qatar has also said that even where UAE measures used the term "Qatari nationals" they directly implicate individuals of Qatari national origin, and that the purpose and the effect of these measures is to impair the rights and freedoms of those individuals contrary to Article 1 of the CERD. I refer again to Qatar's Memorial[109] and to Ms Amirfar's submissions.

12. A good example of a measure that may have the "effect" of discriminating on the basis of national origin is the UAE measure that refers to "Qatari residents and visitors"[110]. That measure left people who look like Qataris, and sound like Qataris, and dress and act like Qataris, but who might happen to have a non-Qatari passport, wondering if that passport would save them when the knock comes on the door to ask why they have not yet left the UAE. The UAE now says that it only meant to target Qatari nationals: but that is not the *effect* that such measures have. They affect all people of Qatari national origin; and that is part of Qatar's pleaded case.

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

[107] CR 2020/8, p. 15, para. 14 (Bethlehem).

[108] See e.g. AQ, paras. 3, 8, 54; RPMQ, paras. 2, 5; MQ, paras. 1.8, 1.25, 3.86-3.112.

[109] See e.g. MQ, paras. 3.23, 3.109-3.112.

[110] MQ, Vol. II, Ann. 1.

13. I turn secondly to the question of "nationality". Qatar accepts that, in the words of the UAE counsel, "a number of the UAE's measures are expressly addressed to Qatari nationals"[111]. Not, of course, all of them: but "a number" of them.

B. Nationality

14. There is a genuine legal dispute between the Parties as to whether discrimination on the basis of nationality, as such, is a matter that engages the CERD.

15. "Have no doubt", the UAE tells you, "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"[112].

16. Without commenting on the position of each of those particular nationalities, we readily accept that general point. We do not for one moment shrink from that position.

17. The examples the UAE chose are particularly poignant. Within living memory, the so-called Polish Decrees of March 1940 required Polish workers to wear a visible yellow letter "P" badge[113], and barred them from using public transportation, and subjected them to a wide and brutal range of other forms of discrimination and worse[114]. The circumstances were totally different: but it is the *basis* of discrimination that matters here.

18. Would Qatar say that the Polish Decrees were incompatible with the CERD? Yes, it most certainly would. Would the answer be different if Poles had been identified by looking at their passports? No, it would not.

19. The purpose of the CERD is "the Elimination of All Forms of Racial Discrimination". And if governments now choose to frame discriminatory laws that admittedly target or affect an entire people, by defining them in terms of their nationality, then that is how the CERD must

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[111] CR 2020/8, p. 24, para. 11 (Sheeran).

[112] CR 2020/8, p. 23, para. 8 (Sheeran).

[113] See Diemut Majer, *"Non-Germans" under the Third Reich: The Nazi Judicial and Administrative System in Germany and Occupied Eastern Europe, with Special Regard to Occupied Poland, 1939-1945*, Johns Hopkins University Press, 2003, pp. 182-183.

[114] See Diemut Majer, *"Non-Germans" under the Third Reich: The Nazi Judicial and Administrative System in Germany and Occupied Eastern Europe, with Special Regard to Occupied Poland, 1939-1945*, Johns Hopkins University Press, 2003, pp. 250-251.

respond to them. If governments take such steps and do not satisfy the requirements that they have a legitimate aim and employ proportionate means, they violate the CERD.

20. And indeed, that is how the CERD does respond to them. The position of the CERD Committee, as you have heard, is clear. It has "repeatedly called on States Parties to address instances of discrimination against non-citizens on the basis of their nationality"[115].

21. The UAE wants you to say that the CERD Committee has been wrong and that it has no business looking at those matters. Presumably, it should therefore call off the Conciliation Commission that it has established to address this matter.

22. It is hard to imagine a much more regressive step on the human rights front; or a step that would do more to upset a system that has been working well for over 50 years in examining nationality-based discrimination. The implications of such a step for the stability and legal certainty of the United Nations Human Rights treaty system would be very significant.

23. Finally, I turn to the Article 22 point. And here again there is a genuine legal dispute between the Parties.

C. Parallel proceedings

24. Mr. Martin has taken you through this in some detail, because it is important to record correctly Qatar's attempts to negotiate and the significance of the UAE's ultimatum — which still stands today[116] — and its refusal to talk until Qatar accepts all of the UAE's demands.

25. But my point is more simple. What we have learned is that the Parties have different conceptions of the role of the Court.

26. The UAE argues that the reference in CERD Article 22 to "[a]ny dispute . . . which is not settled by negotiation or the [CERD] procedures" imposes a duty on the parties to exhaust one or both of those processes. The Court's jurisdiction is, in effect, made dependent on — and in that sense, a part of — the CERD procedural system.

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[115] CERD Committee, "Decision on the admissibility of the inter-State communication submitted by Qatar against the United Arab Emirates", UN doc. CERD/C/99/4 (adopted 27 Aug. 2019), p. 12, para. 58.

[116] CR 2020/8, p. 43, para. 3 (Al-Otaiba).

27. In Qatar's view, that is not a proper reading of Article 22; and even if it were, as a matter of fact Qatar has satisfied any preconditions to recourse to the Court that might be thought to be implied by the words of Article 22.

28. For those reasons, the Court need not pursue the Article 22 argument any further. It is completely answered on the facts, and also on the interpretation of what Article 22 requires. But it is clear that the Parties nonetheless have different views of how the Court should carry out its mandate.

29. Qatar considers that the question before the Court is whether the UAE's actions were and are consistent with the CERD. The question before the Conciliation Commission is, how do we get out of this appalling mess and how can the Commission help — a question that the Court is not asked, and that is of a kind that, as the Court observed in the *Haya de la Torre* case[117], it could not answer because it is outside the judicial function. They are different questions before different bodies with different functions.

30. Qatar submits that the Court's role as the principal judicial organ of the United Nations is quite clear. It is to give rulings on questions of law. How recourse to the Court fits in with other initiatives or processes is not a consideration that has any bearing on the question whether the Court has jurisdiction over a particular case or should exercise that jurisdiction.

31. The UAE has dropped its *lis pendens* argument; but that argument at least made sense. This Court should not rule on legal questions if another *court* has already been asked to rule on the same questions. But as we pointed out in an earlier phase of this case, *lis pendens* applies where two or more *judicial* bodies are asked the same question[118]. A conciliation commission is not a court of law, and a conciliation exercise is not a court judgment.

32. Mr. President, Members of the Court: this is not a moot problem. The discrimination against Qataris is continuing today. It has concrete effects. Qatar's Memorial spells out in detail the effect of these measures on the equal enjoyment of specific rights, as guaranteed by the CERD, including the right to family life, to education and to equal treatment before tribunals[119].

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[117] *Haya de la Torre (Colombia/Peru), Judgment, I.C.J. Reports 1951*, p. 79.

[118] CR 2019/6, pp. 22-26, paras. 27-48 (Lowe).

[119] MQ, para. 5.96 *et seq.*

33. These facts have yet to be presented to you; but the UAE does not want you to hear them. Indeed, it was striking that after their extensive focus on the facts last Monday, particularly on the characterization of the UAE's measures, we heard very little about facts on Friday. Perhaps the UAE realized it had essentially been pleading the merits, and doing so because the issues before you are not purely legal: they depend in part on factual, merits questions. But now the UAE seems to want the Court to adopt its narrative and not to test its position against these facts.

34. Qatar submits that the suggestion that discrimination based on passports and nationality is compatible with obligations under the CERD is, both as a matter of fact in this case and as a matter of law, incorrect. The suggestion that the CERD can have no bearing on this current discrimination against Qataris, or on similarly-designed discrimination in future, is one that in Qatar's submission needs a clear response from the Court, to which the CERD gives the ultimate authority on questions of its interpretation and application.

35. That, Sir, brings to a close my submissions on behalf of the State of Qatar; and unless I can assist you further, I ask that you now call upon Dr. Al-Khulaifi, the Agent of the State of Qatar, to make the final submissions. Thank you, Sir.

The PRESIDENT: I thank Professor Lowe for his statement. I shall now give the floor to the Agent of the State of Qatar, Mr. Mohammed Abdulaziz Al-Khulaifi. You have the floor.

Mr. AL-KHULAIFI:

V. CLOSING STATEMENT

1. Thank you, Mr. President, honourable Members of the Court. It is my privilege to address you once again and to close the submissions by the State of Qatar.

2. On Friday, the UAE again acknowledged that "the people of Qatar" have been "unfortunately affected" by the UAE's measures, which the UAE claims were targeted not at them but at the State of Qatar[120]. In a very real sense, the UAE's statements about the effect on Qataris reveal a regrettably casual approach to this dispute. The UAE acts as if ongoing violations of Qataris' fundamental human rights, as guaranteed by the Convention, are acceptable collateral

[120] CR 2020/8, p. 41, para. 3 (AlNaqbi); see also CR 2020/6, pp. 18-19, para. 10 (AlNaqbi).

damage in the UAE's pursuit of political advantage against the State of Qatar. That could never be the case, and the vindication of Qatar's rights and those of its people is precisely why Qatar continues to pursue the judicial resolution of this dispute.

3. The UAE's first preliminary objection should be rejected for two independent reasons. *First*, as the CERD Committee emphasized in its August 2019 decisions, distinctions based on nationality may constitute discrimination prohibited by the Convention[121]. *Second*, the UAE's actions directly implicate individuals of Qatari national origin in the historical-cultural sense and have the purpose and effect of infringing upon the enjoyment of their fundamental rights under the Convention on an equal basis. These acts thus are within the Court's jurisdiction. Alternatively, and at a minimum, the questions of nationality and national origin raised by Qatar's claims are inextricably linked to the merits of this case and should therefore be joined to the merits.

4. With respect to its second preliminary objection, the UAE repeated on Friday its apparent willingness now to engage in the conciliation process before the *ad hoc* CERD Commission. At the same time, it is important to recall how we got to this point. On Friday, the UAE's representative stated that it "is a cause for disappointment that [the UAE was] unable to resolve this dispute diplomatically" before the imposition of the measures in June 2017[122].

5. Mr. President, that sentiment simply does not comport with the fact that the UAE did not reach out to Qatar in the days, weeks, even months before the termination of relations, and its imposition of the measures was sudden and shocking[123]. Nor indeed did the UAE respond to Qatar's numerous overtures at any point thereafter — even with regard to Qatar's offer to work with the UAE on the implementation of the Court's provisional measures Order[124], which the UAE continues to violate to this very day. As it stands, the UAE has yet to live up to its words.

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

[122] CR 2020/8, pp. 40-41, para. 2 (AlNaqbi).

[123] See e.g. "Foreign Minister: Dialogue is Qatar's strategic choice for settling disputes" (6 June 2017), available at https://mofa.gov.qa/en/all-mofa-news/details/2017/06/05/foreign-minister-dialogue-is-qatar%27s-strategic-choice-for-settling-disputes.

[124] MQ, Vol. I, para. 6.11; MQ, Vol. II, Ann. 31, Letter from the Agent of the United Arab Emirates to the Registrar of the International Court of Justice (12 Sept. 2018).

6. When it comes to the Court's jurisdiction to consider Qatar's claims, it will not be lost on the Court that there is a fundamental contradiction in the UAE's position. On the one hand, the UAE rejects the Court's jurisdiction on the ground that Qatar's claims fall *outside* the scope of the Convention. At the same time, the UAE also states it is now willing to engage with Qatar under the Convention before the Conciliation Commission on what it calls the same dispute[125]. Why? Because it directly serves the UAE's argument that the Court lacks jurisdiction to consider this dispute under Article 22 due to the pending conciliation proceedings. Indeed, even while urging dismissal of this case in favour of those proceedings, the UAE continues to push for "a clear statement from the Court about the parameters and limits of the CERD" specifically on the "issue of nationality", so that it may "address it within the conciliation process"[126]. In other words, the UAE clings to its long-standing position that nationality-based discrimination is outside the scope of the Convention, and that neither the Court nor the CERD Committee procedures possesses jurisdiction to consider its measures.

7. Further, the UAE's suggestion that "[i]f the conciliation process does not succeed, Qatar has the choice to come back to the Court with a new Application"[127]. This is just more gamesmanship. It ignores, deliberately, the years of delay that such a course could entail for a final and binding adjudication of Qatar's rights under the Convention by the Court. This is fundamentally at odds with the mandate of the Convention, which the Court has stated is "to eradicate all forms of racial discrimination effectively and *promptly*"[128].

8. Under the legal framework of the Convention, the Court has a specific role to play that is distinct from conciliation and that may be engaged where, as here, any further attempt at negotiation was futile at the time the Application was filed. In the context of this dispute, which is undoubtedly about the interpretation and application of the Convention, there is no substitute, Mr. President, Members of the Court, for the binding judicial resolution that only the Court can provide.

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[125] CR 2020/8, pp. 12-13, paras. 4-5 (Bethlehem).

[126] CR 2020/8, p. 42, para. 8 (AlNaqbi).

[127] CR 2020/8, p. 42, para. 10 (AlNaqbi).

[128] *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Preliminary Objections, Judgment of 8 November 2019*, para. 111; emphasis added.

9. Mr. President, I shall now read out Qatar's final submissions.

"In accordance with Article 60 of the Rules of Court, for the reasons explained in our Written Statement of 30 August 2019 and during these hearings, Qatar respectfully asks the Court to:

(a) Reject the Preliminary Objections presented by the UAE;

(b) Hold that it has jurisdiction to hear the claims presented by Qatar as set out in its Application and Memorial; and

(c) Proceed to hear those claims on the merits;

(d) Or, in the alternative, reject the Second Preliminary Objection presented by the UAE and hold, in accordance with the provisions of Article 79ter, paragraph 4, of the Rules of Court, that the First Preliminary Objection submitted by the UAE does not possess an exclusively preliminary character."

10. Mr. President, honourable Members of the Court, I thank you for your kind attention. I would also like to take the opportunity to thank all members of the Registry and interpreters for their dedicated work throughout the hearings, particularly for their flexibility in adapting to these difficult and unusual times. And, Mr. President, on behalf of the State of Qatar, I would like also to extend my well wishes to the Court and everyone associated with these hearings. Thank you, Mr. President.

The PRESIDENT: I thank the Agent of Qatar. The Court takes note of the final submissions of Qatar which you have just read out on behalf of your Government. This brings the present series of sittings to an end. I would like to thank the Agents, counsel and advocates of the two Parties for their statements, for their co-operation in the organization of these hearings and for their patience while we were trying to resolve the technical difficulties we experienced this afternoon. In accordance with the usual practice, I shall request both Agents to remain at the Court's disposal to provide any additional information the Court may require. With this proviso, I declare closed the oral proceedings in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates)* on the preliminary objections raised by the United Arab Emirates. The Court will now retire for deliberation. The Agents of the Parties will be advised in due course as to the date on which the Court will deliver its Judgment. Since the Court has no other business before it today, the sitting is declared closed.

The Court rose at 4.55 p.m.

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