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Summary
Unofficial

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Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates)

History of the proceedings (paras. 1-25)

The Court begins by recalling that, on 11 June 2018, the State of Qatar (hereinafter "Qatar") filed in the Registry of the Court an Application instituting proceedings against the United Arab Emirates (hereinafter the "UAE") with regard to alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (hereinafter "CERD" or the "Convention"). It notes that, in its Application, Qatar seeks to found the Court's jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article 22 of CERD.

The Court then states that, following Qatar's submission of a Request for the indication of provisional measures on 11 June 2018, the Court, by an Order of 23 July 2018, indicated the following provisional measures:

> "(1) The United Arab Emirates must ensure that
>
> (i) families that include a Qatari, separated by the measures adopted by the United Arab Emirates on 5 June 2017, are reunited;
>
> (ii) Qatari students affected by the measures adopted by the United Arab Emirates on 5 June 2017 are given the opportunity to complete their education in the United Arab Emirates or to obtain their educational records if they wish to continue their studies elsewhere; and
>
> (iii) Qataris affected by the measures adopted by the United Arab Emirates on 5 June 2017 are allowed access to tribunals and other judicial organs of the United Arab Emirates;
>
> (2) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve."

The Court also recalls that, on 22 March 2019, the UAE submitted a Request for the indication of provisional measures, which was rejected by the Court in its Order of 14 June 2019.

Finally, the Court states that, on 30 April 2019, the UAE presented preliminary objections to the jurisdiction of the Court and the admissibility of the Application.

I. INTRODUCTION (PARAS. 26-40)

A. Factual background (paras. 26-34)

The Court recalls that, on 5 June 2017, the UAE issued a statement which provided, in relevant part, that it had been decided to:

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

The Court further recalls that the UAE took certain additional measures relating to Qatari media and speech in support of Qatar. In this regard, it notes in particular that, on 6 June 2017, the Attorney General of the UAE issued a statement indicating that expressions of sympathy for the State of Qatar or objections to the measures taken by the UAE against the Qatari Government were considered crimes punishable by imprisonment and a fine. The UAE blocked several websites operated by Qatari companies, including those run by Al Jazeera Media Network. On 6 July 2017, the Abu Dhabi Department of Economic Development issued a circular prohibiting the broadcasting of certain television channels operated by Qatari companies.

The Court also notes that, on 8 March 2018, Qatar deposited a communication with the Committee on the Elimination of Racial Discrimination (hereinafter the "CERD Committee") under Article 11 of the Convention, requesting that the UAE take all necessary steps to end the measures enacted and implemented since 5 June 2017.

In its decision on jurisdiction with regard to Qatar's inter-State communication, dated 27 August 2019, the CERD Committee concluded that "it ha[d] jurisdiction to examine the exceptions of inadmissibility raised by the Respondent State" (Decision on the jurisdiction of the Committee over the inter-State communication submitted by Qatar against the UAE dated 27 August 2019, United Nations, doc. CERD/C/99/3, para. 60). The Committee

> "request[ed] its Chairperson to appoint, in accordance with article 12 (1) of the Convention, the members of an *ad hoc* Conciliation Commission, which shall make its good offices available to the States concerned with a view to an amicable solution of the matter on the basis of the States parties' compliance with the Convention".

The *ad hoc* Conciliation Commission was appointed by the Chair of the Committee and has been effective since 1 March 2020.

B. The jurisdictional basis invoked and the preliminary objections raised (paras. 35-40)

The Court recalls that Qatar asserts that the Court has jurisdiction over its Application pursuant to Article 22 of CERD, which provides that:

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

Qatar contends that there is a dispute between the Parties with respect to the interpretation and application of CERD and that the Parties have been unable to settle this dispute despite Qatar's attempts to negotiate with the UAE.

The Court notes that at the present stage of the proceedings, the UAE is asking it to adjudge and declare that the Court lacks jurisdiction to address the claims brought by Qatar on the basis of two preliminary objections. In its first preliminary objection, the UAE maintains that the Court lacks jurisdiction *ratione materiae* over the dispute between the Parties because the alleged acts do not fall within the scope of CERD. In its second preliminary objection, the UAE asserts that Qatar failed to satisfy the procedural preconditions of Article 22 of CERD.

The Court further notes that, in its written pleadings, the UAE also included an objection to admissibility on the ground that Qatar's claims constitute an abuse of process. However, during the oral proceedings, counsel for the UAE stated that it was not pursuing an allegation of abuse of process at this stage of the proceedings.

II. SUBJECT-MATTER OF THE DISPUTE (PARAS. 41-70)

As a preliminary, the Court recalls that, pursuant to Article 40, paragraph 1, of its Statute and Article 38, paragraph 1, of its Rules, an applicant is required to indicate the subject of a dispute in its application.

It notes that it is for the Court itself to determine on an objective basis the subject-matter of the dispute between the parties, by isolating the real issue in the case and identifying the object of the applicant's claims. The Court recalls that, in doing so, it examines the application, as well as the written and oral pleadings of the parties, while giving particular attention to the formulation of the dispute chosen by the applicant. It takes account of the facts that the applicant presents as the basis for its claims. The matter is one of substance, not of form.

In the present case, after setting out the arguments of the Parties, the Court observes that, as can be seen from Qatar's characterization of the subject-matter of the dispute, Qatar makes three claims of racial discrimination. The first is its claim arising out of the "travel bans" and "expulsion order", which make express reference to Qatari nationals. The second is its claim arising from the restrictions on Qatari media corporations. Qatar's third claim is that the measures taken by the UAE, including the measures on which Qatar bases its first and second claims, result in "indirect discrimination" on the basis of Qatari national origin.

As to Qatar's first claim, taking into account Qatar's characterization of these measures and the facts on which it relies in support of its claim that the measures that it describes as the "expulsion order" and the "travel bans" discriminate against Qataris on the basis of their current nationality, in violation of the UAE's obligations under CERD, as well as the characterization by the Respondent, the Court considers that the Parties hold opposing views over this claim.

With regard to Qatar's second claim, the Court has noted that the UAE does not deny that it imposed measures to restrict broadcasting and internet programming by certain Qatari media corporations. The Parties disagree, however, on whether those measures directly targeted these media corporations in a racially discriminatory manner, in violation of the UAE's obligations under CERD.

As to its third claim, as noted above, Qatar maintains that the subject-matter of the dispute encompasses Qatar's assertion that the "expulsion order" and the "travel bans" give rise to "indirect discrimination" against persons of Qatari national origin, independent of the claim of racial discrimination on the basis of current nationality. The UAE, however, maintains that this claim of "indirect discrimination" is not part of the case presented in Qatar's Application.

The Court observes that the subject-matter of a dispute is not limited by the precise wording that an applicant State uses in its application. The Rules of Court provide an applicant State with some latitude to develop the allegations in its application, so long as it does not "transform the

dispute brought before the Court by the application into another dispute which is different in character" (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998,* pp. 318-319, paras. 98 and 99).

The Court turns next to Qatar's other allegations of "indirect discrimination" against persons of Qatari national origin. In this regard, it recalls that Qatar brings these allegations on the basis of the restrictions on Qatari media corporations and other measures that, in its view, attack freedom of expression, incite anti-Qatari sentiment and criminalize speech deemed to be in favour of Qatar or critical of the UAE's policies towards Qatar, as well as statements by the UAE or its officials that express or condone anti-Qatari hate speech and propaganda.

The Court notes that Qatar made specific references in its Application to the 6 June 2017 statement by the Attorney General of the UAE, the restrictions on Qatari media corporations, the UAE's "media defamation" campaign against Qatar and alleged statements by UAE officials fostering anti-Qatari sentiment. It further notes that the Parties address these contentions in their written and oral pleadings. In this regard, the UAE again argues that by invoking the restrictions on Qatari media corporations in support of its claim of "indirect discrimination", Qatar has presented a new argument that does not form part of the case pleaded in its Application.

As the Court previously noted, the Rules of Court do not preclude Qatar from refining the legal arguments presented in its Application or from advancing new arguments. Taking into account the Application and the written and oral pleadings, as well as the facts asserted by Qatar, the Court considers that the Parties hold opposing views over Qatar's claim that the UAE has engaged in "indirect discrimination" against persons of Qatari national origin, in violation of its obligations under CERD.

In view of its analysis, the Court concludes that the Parties disagree in respect of Qatar's three claims that the UAE has violated its obligations under CERD: first, the claim that the measures that Qatar describes as the "expulsion order" and the "travel bans", by their express references to Qatari nationals, discriminate against Qataris on the basis of their current nationality; secondly, the claim that the UAE imposed racially discriminatory measures on certain Qatari media corporations; and thirdly, the claim that the UAE has engaged in "indirect discrimination" against persons of Qatari national origin by taking these measures and others. The Parties' disagreements in respect of these claims form the subject-matter of the dispute.

III. FIRST PRELIMINARY OBJECTION: JURISDICTION *RATIONE MATERIAE* (PARAS. 71-114)

The Court then considers whether it has jurisdiction *ratione materiae* over the dispute under Article 22 of CERD.

In order to determine whether the dispute is one with respect to the interpretation or application of CERD, under its Article 22, the Court examines whether each of the above claims falls within the scope of that instrument. The Court addresses Qatar's claims in the order in which they are mentioned in the above characterization of the subject-matter of the dispute.

The Court observes that, as far as the first claim of Qatar is concerned, the Parties disagree on whether the term "national origin" in Article 1, paragraph 1, of the Convention encompasses current nationality. In respect of the second claim of Qatar, the Parties disagree on whether the scope of the Convention extends to Qatari media corporations. Finally, in respect of the third claim, the Parties disagree on whether the measures of which Qatar complains give rise to "indirect discrimination" against Qataris on the basis of their national origin. The Court examines each of these questions with a view to ascertaining whether it has jurisdiction *ratione materiae* in the present case.

A. The question whether the term "national origin" encompasses current nationality (paras. 74-105)

Qatar is of the view that the term "national origin", in the definition of racial discrimination in Article 1, paragraph 1, of the Convention, encompasses current nationality and that the measures of which Qatar complains thus fall within the scope of CERD. The UAE argues that the term "national origin" does not include current nationality and that the Convention does not prohibit differentiation based on the current nationality of Qatari citizens, as complained of by Qatar in this case. Thus, the Parties hold opposing views on the meaning and scope of the term "national origin" in Article 1, paragraph 1, of the Convention, which reads:

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

In order to determine its jurisdiction *ratione materiae* in this case, the Court interprets CERD and specifically the term "national origin" in Article 1, paragraph 1, thereof by applying the rules on treaty interpretation enshrined in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (hereinafter the "Vienna Convention"). Although that Convention is not in force between the Parties and is not, in any event, applicable to treaties concluded before it entered into force, such as CERD, it is well established that Articles 31 and 32 of the Vienna Convention reflect rules of customary international law.

1. The term "national origin" in accordance with its ordinary meaning, read in its context and in the light of the object and purpose of CERD (paras. 78-88)

The Court recalls that Article 31, paragraph 1, of the Vienna Convention provides that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". The Court's interpretation must take account of all these elements considered as a whole.

As the Court has recalled on many occasions, "[i]nterpretation must be based above all upon the text of the treaty" (*Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994,* p. 22, para. 41). The Court observes that the definition of racial discrimination in the Convention includes "national or ethnic origin". These references to "origin" denote, respectively, a person's bond to a national or ethnic group at birth, whereas nationality is a legal attribute which is within the discretionary power of the State and can change during a person's lifetime. The Court notes that the other elements of the definition of racial discrimination, as set out in Article 1, paragraph 1, of the Convention, namely race, colour and descent, are also characteristics that are inherent at birth.

The Court next turns to the context in which the term "national origin" is used in the Convention, in particular paragraphs 2 and 3 of Article 1. It considers that these provisions support the interpretation of the ordinary meaning of the term "national origin" as not encompassing current nationality. While according to paragraph 3, the Convention in no way affects legislation concerning nationality, citizenship or naturalization, on the condition that such legislation does not discriminate against any particular nationality, paragraph 2 provides that any "distinctions, exclusions, restrictions or preferences" between citizens and non-citizens do not fall within the scope of the Convention.

The Court then examines the object and purpose of the Convention. Recalling that it has frequently referred to the preamble of a convention to determine its object and purpose, the Court notes in the present case that CERD was drafted against the backdrop of the 1960s decolonization movement, for which the adoption of resolution 1514 (XV) of 14 December 1960 was a defining moment. By underlining that "any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere", the Preamble to the Convention clearly sets out its object and purpose, which is to bring to an end all practices that seek to establish a hierarchy among social groups as defined by their inherent characteristics or to impose a system of racial discrimination or segregation. The aim of the Convention is thus to eliminate all forms and manifestations of racial discrimination against human beings on the basis of real or perceived characteristics as of their origin, namely at birth.

CERD, whose universal character is confirmed by the fact that 182 States are parties to it, thus condemns any attempt to legitimize racial discrimination by invoking the superiority of one social group over another. Therefore, it was clearly not intended to cover every instance of differentiation between persons based on their nationality. Differentiation on the basis of nationality is common and is reflected in the legislation of most States parties.

Consequently, the term "national origin" in Article 1, paragraph 1, of CERD, in accordance with its ordinary meaning, read in its context and in the light of the object and purpose of the Convention, does not encompass current nationality.

2. The term "national origin" in the light of the *travaux préparatoires* as a supplementary means of interpretation (paras. 89-97)

In light of the conclusion above, the Court considers that it need not resort to supplementary means of interpretation. However, it notes that both Parties have carried out a detailed analysis of the *travaux préparatoires* of the Convention in support of their respective positions on the meaning and scope of the term "national origin" in Article 1, paragraph 1, of the Convention. Considering this fact and the Court's practice of confirming, when it deems it appropriate, its interpretation of the relevant texts by reference to the *travaux préparatoires*, the Court examines the *travaux préparatoires* of CERD in the present case.

The Court recalls that the Convention was drafted in three stages: first, as part of the work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, then within the Commission on Human Rights and, finally, within the Third Committee of the United Nations General Assembly. In the view of the Court, the definition of racial discrimination contained in the various drafts demonstrates that the drafters did in fact have in mind the differences between national origin and nationality.

The Court concludes that the *travaux préparatoires* as a whole confirm that the term "national origin" in Article 1, paragraph 1, of the Convention does not include current nationality.

3. The practice of the CERD Committee (paras. 98-101)

The Court next turns to the practice of the CERD Committee. It notes that, in its General Recommendation XXX, the CERD Committee considered that "differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim".

The Court recalls that, in its Judgment on the merits in the *Diallo* case, it indicated that it should "ascribe great weight" to the interpretation of the International Covenant on Civil and Political Rights — which it was called upon to apply in that case — adopted by the Human Rights Committee (*Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 664, para. 66). In this regard, it also affirmed, however, that it was "in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the Covenant on that of the Committee". In the present case concerning the interpretation of CERD, the Court has carefully considered the position taken by the CERD Committee on the issue of discrimination based on nationality. By applying, as it is required to do, the relevant customary rules on treaty interpretation, it came to the conclusion, on the basis of the reasons set out above, that the term "national origin" in Article 1, paragraph 1, of CERD, in accordance with its ordinary meaning, read in its context and in the light of the object and purpose of the Convention, does not encompass current nationality.

4. The jurisprudence of regional human rights courts (paras. 102-104)

Lastly, the Court notes that both Parties referred in their written and oral pleadings to the jurisprudence of regional human rights courts in their arguments on the meaning and scope of the term "national origin".

It recalls that it is for the Court, in the present case, to determine the scope of CERD, which exclusively concerns the prohibition of racial discrimination on the basis of race, colour, descent, or national or ethnic origin. The Court notes that the regional human rights instruments on which the jurisprudence of the regional courts is based concern respect for human rights without distinction of any kind among their beneficiaries. The relevant provisions of these conventions are modelled on Article 2 of the Universal Declaration of Human Rights of 10 December 1948.

While these legal instruments all refer to "national origin", their purpose is to ensure a wide scope of protection of human rights and fundamental freedoms. The jurisprudence of regional human rights courts based on those legal instruments is therefore of little help for the interpretation of the term "national origin" in CERD.

5. Conclusion on the interpretation of the term "national origin" (para. 105)

In light of the above, the Court finds that the term "national origin" in Article 1, paragraph 1, of the Convention does not encompass current nationality. Consequently, the measures complained of by Qatar in the present case as part of its first claim, which are based on the current nationality of its citizens, do not fall within the scope of CERD.

B. The question whether the measures imposed by the UAE on certain Qatari media corporations come within the scope of the Convention (paras. 106-108)

The Court recalls that, in its second claim, Qatar complains that the measures imposed on certain media corporations in the UAE have infringed the right to freedom of opinion and expression of Qataris.

For the present purposes, the Court examines only whether the measures concerning certain Qatari media corporations, which according to Qatar have been imposed in a racially discriminatory manner, fall within the scope of the Convention.

The Court notes that the Convention concerns only individuals or groups of individuals. In its view, this is clear from the various substantive provisions of CERD (in particular Article 1,

paragraph 4, Article 4 *(a)* and Article 14, paragraph 1), as well as its Preamble. It considers that, read in its context and in the light of the object and purpose of the Convention, the term "institutions" refers to collective bodies or associations, which represent individuals or groups of individuals. Thus, the Court concludes that Qatar's second claim relating to Qatari media corporations does not fall within the scope of the Convention.

C. The question whether the measures that Qatar characterizes as "indirect discrimination" against persons of Qatari national origin fall within the scope of the Convention
(paras. 109-113)

The Court recalls that Qatar submits that the "expulsion order" and "travel bans", as well as other measures taken by the UAE, have had the purpose and effect of discriminating "indirectly" against persons of Qatari national origin in the historical-cultural sense, namely persons of Qatari birth and heritage, including their spouses, their children and persons otherwise linked to Qatar.

The Court further recalls that it has already found that the "expulsion order" and "travel bans" of which Qatar complains as part of its first claim do not fall within the scope of CERD, since these measures are based on the current nationality of Qatari citizens, and that such differentiation is not covered by the term "national origin" in Article 1, paragraph 1, of the Convention. The Court then turns to the question whether these and any other measures as alleged by Qatar are capable of falling within the scope of the Convention, if, by their purpose or effect, they result in racial discrimination against certain persons on the basis of their Qatari national origin.

The Court first observes that, according to the definition of racial discrimination in Article 1, paragraph 1, of CERD, a restriction may constitute racial discrimination if it "has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". Thus, the Convention prohibits all forms and manifestations of racial discrimination, whether arising from the purpose of a given restriction or from its effect. In the present case, while the measures based on current Qatari nationality may have collateral or secondary effects on persons born in Qatar or of Qatari parents, or on family members of Qatari citizens residing in the UAE, this does not constitute racial discrimination within the meaning of the Convention. In the Court's view, the various measures of which Qatar complains do not, either by their purpose or by their effect, give rise to racial discrimination against Qataris as a distinct social group on the basis of their national origin. The Court further observes that declarations criticizing a State or its policies cannot be characterized as racial discrimination within the meaning of CERD. Thus, the Court concludes that, even if the measures of which Qatar complains in support of its "indirect discrimination" claim were to be proven on the facts, they are not capable of constituting racial discrimination within the meaning of the Convention.

It follows from the above that the Court does not have jurisdiction *ratione materiae* to entertain Qatar's third claim, since the measures complained of therein by that State do not entail, either by their purpose or by their effect, racial discrimination within the meaning of Article 1, paragraph 1, of the Convention.

D. General conclusion (para. 114)

In light of the above, the Court concludes that the first preliminary objection raised by the UAE must be upheld. Having found that it does not have jurisdiction *ratione materiae* in the present case under Article 22 of the Convention, the Court does not consider it necessary to examine the second preliminary objection raised by the UAE. In accordance with its jurisprudence, when its jurisdiction is challenged on diverse grounds, the Court is "free to base its decision on the ground which in its judgment is more direct and conclusive".

OPERATIVE CLAUSE (PARA. 115)

For these reasons,

THE COURT,

(1) By eleven votes to six,

Upholds the first preliminary objection raised by the United Arab Emirates;

IN FAVOUR: *Vice-President* Xue; *Judges* Tomka, Abraham, Bennouna, Donoghue, Gaja, Crawford, Gevorgian, Salam; *Judges* ad hoc Cot, Daudet;

AGAINST: *President* Yusuf; *Judges* Cançado Trindade, Sebutinde, Bhandari, Robinson, Iwasawa;

(2) By eleven votes to six,

Finds that it has no jurisdiction to entertain the Application filed by the State of Qatar on 11 June 2018.

IN FAVOUR: *Vice-President* Xue; *Judges* Tomka, Abraham, Bennouna, Donoghue, Gaja, Crawford, Gevorgian, Salam; *Judges* ad hoc Cot, Daudet;

AGAINST: *President* Yusuf; *Judges* Cançado Trindade, Sebutinde, Bhandari, Robinson, Iwasawa.

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President YUSUF appends a declaration to the Judgment of the Court; Judges SEBUTINDE, BHANDARI and ROBINSON append dissenting opinions to the Judgment of the Court; Judge IWASAWA appends a separate opinion to the Judgment of the Court; Judge *ad hoc* DAUDET appends a declaration to the Judgment of the Court.

Declaration of President Yusuf

President Yusuf disagrees with the conclusions of the Court and the reasoning of the majority on two interrelated issues: the determination of the subject-matter of the dispute and the jurisdiction *ratione materiae* of the Court with regard to what is referred to in the Judgment as a claim of "indirect discrimination".

In President Yusuf's view, the majority has framed the subject-matter of the dispute in a manner totally disconnected from the Applicant's written and oral pleadings. While Qatar has consistently claimed that the measures adopted by the UAE amount to racial discrimination on the basis of "national origin" both in purpose and in effect, the entire reasoning of the Judgment turns on the concept of "nationality" and proceeds to make an artificial classification of Qatar's claims in three categories that ignore the actual formulation of the dispute chosen by the Applicant. In his view, the majority departs from the long-standing jurisprudence of the Court that, when determining the subject-matter of the dispute, the Court must give particular attention to the actual formulation of the dispute chosen by the applicant. Had the majority applied this jurisprudence to this case, it would have come to the conclusion that Qatar's claims of racial discrimination on grounds of "national origin" fall squarely within the scope of Article 1, paragraph 1, of CERD.

Furthermore, President Yusuf disagrees with the approach of the majority with regard to the Applicant's claim of so-called "indirect discrimination". In his view, the examination of Qatar's claims of racial discrimination against individuals of Qatari national origin raises questions of fact regarding the actual effect of the impugned measures on such individuals and is therefore properly a matter for the merits. What matters at this stage is whether the impugned measures were capable of having an adverse effect on rights protected under CERD. In President Yusuf's view, the measures complained of by Qatar were capable of having such an effect on persons of Qatari national origin, and the Court should have left their examination for the merits stage.

Dissenting opinion of Judge Sebutinde

In her dissenting opinion Judge Sebutinde opines that the first preliminary objection of the UAE does not, in the circumstances of the present case, have an exclusively preliminary character and should be joined to the merits, pursuant to the provisions of Article 79*ter*, paragraph 4, of the Rules of Court. In particular, the question of whether or not the measures taken by the UAE against Qatar and Qataris on 5 June 2017 had "the purpose or effect of racial discrimination" within the meaning of Article 1, paragraph 1, of the CERD, is a delicate and complex one that can only be determined after a detailed examination of the evidence and arguments of the Parties during the merits stage.

Secondly, Judge Sebutinde further opines that the preconditions referred to in Article 22 of the CERD are in the alternative and are not cumulative. The wording of Article 22 of the CERD does not expressly require a party to exhaust the CERD procedures before that party can unilaterally seise the Court. Both Parties acknowledge that the CERD Committee and the proceedings before the Court have related but fundamentally distinct roles relating to resolving disputes between States parties to the CERD. The Committee's role is conciliatory and recommendatory, while that of the Court is legal and binding. There is nothing incompatible about Qatar pursuing the two procedures in parallel and, accordingly, the second preliminary objection of the UAE should be rejected.

Thirdly, according to the Court's well-established jurisprudence, a claim based upon a valid title of jurisdiction cannot be challenged on grounds of "abuse of process" unless the high threshold of "exceptional circumstances" has been met. The UAE has not met that threshold. Qatar's claims are admissible and the third preliminary objection should also be rejected, and the Court should find Qatar's Application admissible.

Dissenting opinion of Judge Bhandari

In his dissenting opinion, Judge Bhandari states his disagreement with the finding of the Judgment upholding the first preliminary objection raised by the UAE and the finding that the Court has no jurisdiction to entertain the Application filed by Qatar. The dispute between Qatar and the UAE concerns the series of discriminatory measures allegedly promulgated by the UAE against Qatar, Qatari nationals and individuals of Qatari "national origin", on 5 June 2017 and the days that followed. In order to invoke the jurisdictional basis under Article 22 of CERD, the alleged discriminatory measures must fall within one of the prohibited categories of "racial discrimination", as defined under Article 1, paragraph 1, of CERD. At this preliminary stage, the Court is called upon to interpret whether the term "national origin" in Article 1, paragraph 1, of CERD encompasses current nationality.

Judge Bhandari first addresses the majority's interpretation of the ordinary meaning of the term "national origin". In interpreting the term's ordinary meaning, the majority highlights the immutable nature of its meaning in opposition to the transient nature of the meaning of "nationality". In Judge Bhandari's view, by alluding that the two words are fundamentally disparate, the Judgment reaches no real consensus in its attempt to delineate the ordinary meaning for two reasons. First, the term "national origin" presents an amalgamation of the words "national" and "origin". When the definitions of these words are analysed, "national origin" refers to a person's belonging to a country or nation. Belonging in this sense may be long standing or historical, and defined by ancestry or descent, or it may be confirmed by the legal status of nationality or national affiliation. Thus, current nationality, even if considered in a purely legal sense to be within the discretion of the State and subject to change over a person's lifetime, is in any event encompassed within the broader term "national origin". Since there is no doubt that these terms coincide, it is difficult to simply distinguish one from the other solely on the basis of immutability. Secondly, where nationality follows a *jus sanguinis* model, nationality coincides with "national origin". Under the *jus sanguinis* model, in Qatar, since nationality is conferred by parentage, the vast majority of Qatari nationals, including those affected by the measures, were born Qatari nationals and are Qatari in the sense of heritage. Nationality in this context is as immutable as "national origin". When the UAE adopted measures targeting "Qatari residents and visitors" and "Qatari nationals", they inevitably also affected persons of Qatari "national origin" since Qatari nationals are primarily persons of Qatari heritage.

In relation to the majority's interpretation of the term "national origin" in its context, in light of the object and purpose of CERD, Judge Bhandari disagrees with the exclusion of the prohibition of discrimination "against any particular nationality" contained in Article 1, paragraph 3, of CERD in the Judgment's reasoning. In his view, the provisions which form the context of Article 1, paragraph 1, of CERD do not envisage broad and unqualified distinctions to be drawn between citizens and non-citizens. Article 1, paragraph 1, of CERD provides a broad definition of racial discrimination which includes discrimination based on "national origin". Article 1, paragraph 2, in functional terms, establishes an exception to the broader principle contained in Article 1, paragraph 1, of CERD by permitting a distinction to be drawn between citizens and non-citizens. However, this exception is limited by the object and purpose of the Convention, to eliminate racial discrimination in all its forms and manifestations. This object and purpose cannot be furthered if States are permitted to draw broad and unqualified distinctions, as have been drawn by the UAE through its measures vis-à-vis Qataris, Qatari nationals, residents and visitors. Article 1, paragraph 3, establishes a further exception to Article 1, paragraph 1; while implicating the

treatment of non-citizens, it clarifies that "such provisions [should] not discriminate against any particular nationality".

According to Judge Bhandari, the *travaux préparatoires* further confirm that the term "national origin" should have a wider application than that envisaged by the majority. He points out that the Judgment does not touch upon the fact that the joint amendment suggested by the delegates of France and the United States of America, which specifically excluded nationality from the purview of "national origin", was withdrawn in favour of a compromise which was considered "entirely acceptable". The nine-power compromise proposal was the result of the exclusion of certain proposed amendments which had the effect of excluding nationality from the purview of "national origin". Arguments made during the debates of the Commission on Human Rights further highlight the compromise that the meaning of "national origin" represents. The delegate of Lebanon, for instance, argued that "[t]he convention should apply to nationals, non-nationals, and all ethnic groups, but it should not bind the parties to afford the same political rights to non-nationals as they normally granted to nationals". The drafter's rejection of the approach that excluded nationality-based discrimination in Article 1, paragraph 1, indicates that CERD's inclusion of "national origin" protects against discrimination on the basis of current nationality.

In Judge Bhandari's view, the ordinary meaning of the term "national origin" therefore encompasses one's nationality, including current nationality. The ordinary meaning in its context, in light of CERD's object and purpose to eliminate "all forms" of racial discrimination, converges to confirm that the term "national origin" encompasses current nationality. An interpretation that categorically excludes current nationality would undermine this object and purpose. Considering the fundamental ambiguity resulting from the approach adopted by the majority to determine the ordinary meaning, the *travaux préparatoires* reinforce the conclusion that CERD's definition of racial discrimination should have a wide application. The *travaux préparatoires* thus confirm the ordinary meaning of "national origin" as encompassing current nationality.

Judge Bhandari further opines that the majority has insufficiently addressed the relevance of the CERD Committee and its General Recommendation XXX, paragraph 4, to the present dispute. The CERD Committee being "the guardian of the Convention", the Judgment provides no compelling reason as to why it has chosen to depart from the observation in *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 664, para. 66, that it "should ascribe great weight" to interpretations by the independent body established for the purpose of supervising the application of the treaty concerned. Moreover, considering the functions it carries out and the manner in which it does this — as well as its composition and its members — the CERD Committee, which has sought to act judicially since its very first meeting in 1970, undoubtedly offers consistent interpretations of CERD by the most highly qualified publicists in this field. Judge Bhandari asserts that his reasoning on this contention is reinforced in light of the Court's willingness to take into account the work of United Nations supervisory bodies of human rights treaties in its judgments in the past, even though reference to external precedents is not a common feature of the Court's case law. Moreover, in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 179-180, paras. 109-112, while quoting from Human Rights Committee General Comment 27, paragraph 14, the Court stated that the restrictions to the freedom of movement in Article 12, paragraph 3, of the International Covenant on Civil and Political Rights "must conform to the principle of proportionality" and "must be the least intrusive instrument amongst those which might achieve the desired result". The Court thereby acknowledged that the derogatory measure in question had to be proportionate to the achievement of a legitimate aim. General Recommendation XXX, paragraph 4, reflects this widely accepted principle of proportionality, thus there appears to be no reason to disregard its application to the present case.

General Recommendation XXX, paragraph 4, provides that differential treatment will "constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim". In this regard, Judge Bhandari states that the UAE announced a series of measures with specific application to Qataris on the basis of their nationality and with the specific purpose of using such measures to "induc[e] Qatar to comply with its obligations under international law". Accordingly, if nationality is determined to be a prohibited basis of discrimination under Article 1, paragraph 1, of CERD, distinctions on this basis are capable of falling within the provisions of CERD when they do not fulfil "a legitimate aim, and are not proportional to the achievement of this aim". The stated purpose of using such measures to induce compliance with unrelated treaty obligations appears neither legitimate nor proportionate, given the fundamental human rights claimed to have been affected. The alleged acts by the UAE thus disproportionately affect Qatari nationals and satisfy the conditions for exercise of the Court's jurisdiction *ratione materiae* under Article 22 of CERD.

In relation to the three heads of claims which form the subject-matter of the dispute, Judge Bhandari concludes that CERD encompasses discrimination against a particular group of non-nationals on the basis of their current nationality. As such, the measures adopted by the UAE which disproportionately affected individuals of Qatari nationality — which form the first claim of Qatar — are capable of falling within the scope of CERD. Furthermore, in Judge Bhandari's view, the majority fails to identify that the word "residents" in the 5 June 2017 measures, which are addressed at "all Qatari residents and visitors", is broad enough to include not only Qatari nationals but also people of Qatari "national origin". If the measures were to only affect Qatari nationals, the measures would have been couched in different terminology. Furthermore, since the majority of Qatari nationals are defined by their Qatari heritage, ancestry or descent, Qatar's third claim of indirect discrimination, which is based on the discriminatory effect of the measures, is capable of falling within the provisions of CERD. In particular, the effect of the adverse media coverage and the anti-Qatari propaganda against Qatari nationals inevitably impairs the enjoyment of rights by individuals of Qatari national origin. The attempt to limit these measures to nationality alone is untenable.

While a full assessment of these claims would appear more appropriate at the merits stage of the proceedings, at the jurisdictional stage, there is a sufficient basis to reject the first preliminary objection of the UAE. Thus, the majority ought to have rejected the first preliminary objection of the UAE.

Dissenting opinion of Judge Robinson

1. Judge Robinson disagrees with the Court upholding the first preliminary objection of the UAE and the finding that the Court has no jurisdiction to entertain the Application filed by Qatar. Judge Robinson argues that the majority has wrongly concluded that the claims arising from the first and third measures do not fall within the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter "CERD" or the "Convention").

2. In relation to the first claim, Judge Robinson maintains that the dispute between the Parties concerns the question whether the term "national origin" in the definition of racial discrimination in Article 1 (1) of CERD excludes or encompasses differences of treatment based on nationality. He concludes that Qatar is correct in its argument that the term "national origin" encompasses differences of treatment based on nationality. In his view, there is nothing in the ordinary meaning of the term "national origin" that would render it inapplicable to a person's current nationality. According to Judge Robinson, the majority has argued as a general proposition that, while nationality is changeable, national origin is a characteristic acquired at birth and for that reason, immutable. However, in Judge Robinson's view, as a general proposition, the validity of

this statement is questionable because it is too stark in its presentation of the difference between nationality and national origin and does not reflect the nuances distinguishing one from the other.

3. Judge Robinson observes that the majority has relied on the Court's judgment in *Nottebohm (Liechtenstein* v. *Guatemala), Second Phase, Judgment, I.C.J. Reports 1955,* p. 20, to support its reasoning that nationality is subject to the discretion of the State. However, in his view, that case, decided in 1955, reflects a substantially State-centred approach to international law that has been affected by subsequent developments in human rights law. For example, it is now generally accepted that a State is not entirely free to deprive a person of its nationality where this act would render the person stateless.

4. Judge Robinson examines the context and the Convention's object and purpose in relation to nationality. He also examines the *travaux préparatoires* in relation to the meaning of the term "national origin" and concludes that the *travaux* confirm the interpretation resulting from the ordinary meaning of the term "national origin". Turning to the work of the CERD Committee and General Recommendation XXX, he argues that it is regrettable that, in this case, the Court did not follow the CERD Committee's recommendation. He noted that the majority did not offer any explanation for not following it.

5. For Judge Robinson, paragraph 4 of General Recommendation XXX seeks to strike a balance between measures taken by a State in the exercise of its sovereign powers and the extent to which those measures may properly derogate from a fundamental human right. He notes that the principle of proportionality is applied in the implementation of all the major global and regional human rights instruments and by the multitude of States, which have, in their national constitutions and laws, provisions relating to the protection of fundamental rights and freedoms that have been influenced by the Universal Declaration of Human Rights and the European Convention on Human Rights. The principle of proportionality is applied by all regional human rights courts. Judge Robinson states that his own view is that the principle may very well reflect a rule of customary international law.

6. According to Judge Robinson, if the Convention is interpreted as not requiring the application of the principle of proportionality set out in paragraph 4 of General Recommendation XXX, it would be an outlier among the number of human rights treaties that have been adopted since World War II. Moreover, the Commission's recommendation is wholly consistent with the purpose of the Convention to eliminate all forms of racial discrimination, since it confirms that States are not free to adopt measures that disproportionately discriminate against persons on the basis of their nationality.

7. Judge Robinson expresses the view that, in the circumstances of this case and in the context of Article 1 (2) and (3) of the Convention, it was open to the UAE to adopt measures distinguishing between the United Arab Emirates' citizens and the citizens of other States, including those of Qatar. However, in adopting those measures, the UAE was obliged to ensure that the measures served a legitimate aim and were proportionate to the achievement of that aim. In any event, Judge Robinson argues that although Article 1 (3) allows a State to adopt measures providing for distinctions on the basis of nationality, it specifically provides that such measures must not discriminate against a particular nationality. Judge Robinson concludes that, in the particular context of this case, Qatar's claim that the measures disproportionately affected Qataris on the basis of their nationality, which is encompassed by the term "national origin", falls within the provisions of the Convention.

8. In relation to the third claim, Judge Robinson argues that according to the Convention, the term "racial discrimination" refers to a restrictive measure that is based on race, colour, descent, or national or ethnic origin, which has the purpose or effect of impairing the enjoyment, on an equal footing, of fundamental human rights. He notes that, as Judge Crawford stated in his declaration in *Ukraine* v. *Russian Federation*, "the definition of 'racial discrimination' in Article 1 of CERD does not require that the restriction in question be based expressly on racial or other grounds enumerated in the definition; it is enough that it directly implicates such a group on one or more of these grounds"[1]. He points out that Qatar relies on this analysis by Judge Crawford in order to distinguish between a restrictive measure that is based expressly on one of the protected grounds (direct discrimination) and one that, although not based expressly on one of those grounds, nonetheless directly implicates a group on one of the protected grounds. For him, translated to the circumstances of this case, Qatar's submission is that, although the UAE's measures do not on their face refer to persons of Qatari national origin, as a matter of fact by their effect they directly implicate persons of Qatari national origin. Qatar describes this as indirect discrimination. He expresses the view that, although Qatar has framed this part of its case as one of indirect discrimination — since labels such as "indirect discrimination" are very often misleading — it is better to concentrate on the essence of Qatar's claim.

9. Judge Robinson comments first that the label "indirect discrimination" may be misleading because, for the so-called indirect discrimination to occur, the measures in question must by their effect directly implicate persons in the protected group. In this case, the measures directly implicate persons of Qatari national origin. In his view, there is nothing that is indirect in the way the measures by their effect implicate persons of Qatari national origin. Second, the kind of treatment described by Qatar as indirect discrimination occurs frequently in the practice of States. Third, another drawback with the label "indirect discrimination" is that it would seem to suggest or imply that indirect discrimination is inferior to what is called direct discrimination and, for that reason, there may be a tendency to undervalue indirect discrimination. He points out that, in paragraph 112 of the Judgment, the majority speaks of "collateral or secondary effects" of the measures. Fourth, the kind of restriction that gives rise to indirect discrimination is frequently disguised discrimination; the discrimination may be difficult to detect because, on its face, the restrictive measure is not based expressly on racial or other grounds.

10. For Judge Robinson, it is regrettable that the majority did not address Qatar's third claim in a satisfactory manner.

11. According to Judge Robinson, the substance of Qatar's third claim is that while the travel ban, the expulsion order and the restrictions on media corporations do not on their face purport to discriminate against Qataris on the basis of their national origin — that is, are not based expressly on national origin — by their effect, they constitute discrimination on that basis. He emphasizes that Qatar's third claim operates independently of its claim that the measures discriminated against Qataris by reason of their nationality; Qatar argues that by reason of their effect the measures also discriminate against Qataris because of their cultural links with Qatar and, therefore, by reason of their Qatari national origin. In his view, the examples given by Qatar of how Qataris have been impacted by the measures are a classical illustration of discrimination based on national origin; they show precisely how Qataris were impacted by the measures by reason of their cultural ties with Qatar as a nation. In his view, it follows, therefore, that Qatar's third claim — based as it is on the effect of the measures on Qataris as persons of Qataris national origin — is not affected by the majority's finding in paragraph 105 that "the measures complained of by Qatar in the present case

[1] *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.

as part of its first claim, which are based on the current nationality of its citizens, do not fall within the scope of CERD". Qatar's third claim is that the measures that are based on national origin, a protected ground in the Convention, fall within the provisions of the Convention.

12. Finally, Judge Robinson concludes that the first preliminary objection should have been rejected as the dispute between the Parties concerns the interpretation or application of the Convention, and the Court should have found that it has jurisdiction *ratione materiae* under Article 22 of CERD in respect of the Qatar's first and third claims in its first preliminary objection.

Separate opinion of Judge Iwasawa

1. Judge Iwasawa agrees with the Court that the term "national origin" in Article 1, paragraph 1, of CERD does not encompass current nationality. However, he disagrees with the Court's analysis and conclusion regarding Qatar's claim of indirect discrimination. The UAE's first preliminary objection, inasmuch as it relates to Qatar's claim of indirect discrimination, raises issues that require a detailed examination by the Court at the merits stage. He is therefore of the view that the Court should have declared that the UAE's first preliminary objection does not possess an exclusively preliminary character.

2. Judge Iwasawa begins his separate opinion by reviewing the position of non-citizens under international law. The 1948 Universal Declaration on Human Rights provides for the prohibition of discrimination in Article 2. It contains a list of prohibited grounds of discrimination, which is illustrative, and not exhaustive. Thus, even though nationality is not expressly mentioned, it may be concluded that discrimination based on nationality is prohibited by the Declaration and that non-citizens are entitled to the human rights enshrined therein. Similarly, non-citizens are entitled to the human rights enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and regional conventions such as the European Convention on Human Rights and the American Convention on Human Rights. This has been confirmed by the international human rights bodies and courts established by these treaties to monitor their implementation by States. Nonetheless, since the Court's jurisdiction in the present case is limited to disputes with respect to the interpretation or application of CERD, Judge Iwasawa points out that the Court has no jurisdiction to make determinations as to whether the measures taken by the UAE comply with other rules of international law.

3. Judge Iwasawa then turns to the question whether the Court has jurisdiction over Qatar's claims. For Qatar's claims to fall within the scope of CERD, the measures taken by the UAE must be capable of constituting "racial discrimination" within the meaning of CERD. According to the definition of "racial discrimination" in Article 1, paragraph 1, of CERD, the measures must be based on "race, colour, descent, or national or ethnic origin". While the UAE maintains that the Court lacks jurisdiction because its alleged acts differentiate on the basis of nationality, Qatar argues that the term "national origin", as used in Article 1, paragraph 1, of CERD, encompasses nationality. Judge Iwasawa agrees with the Court's conclusion that "national origin" does not encompass current nationality and provides additional reasons in support of that conclusion.

4. Judge Iwasawa is of the view that the different levels of scrutiny required in reviewing the lawfulness of differential treatment on the ground of "national origin" and "nationality" support a distinction being made between the two terms. While differential treatment based on "race, colour, descent, or national or ethnic origin" must meet the most rigorous scrutiny, the scrutiny required for distinctions based on "nationality" is not as rigorous. In addition, he emphasizes that the

Court's conclusion is consistent with the interpretation of similar language in other human rights conventions by the bodies established under those conventions. The Human Rights Committee has taken the position that nationality falls within the term "other status", rather than "national origin", both of which are listed as prohibited grounds of discrimination in Article 26 of the ICCPR. The Committee on Economic, Social and Cultural Rights has equally taken the view that nationality falls within "other status" under Article 2, paragraph 2, of the ICESCR.

5. With regard to Qatar's claim of indirect discrimination, the Court considers, in paragraph 112 of the Judgment, that "even if the measures of which Qatar complains in support of its 'indirect discrimination' claim were to be proven on the facts, they are not capable of constituting racial discrimination". Judge Iwasawa disagrees and considers that, if the measures were proven to have an unjustifiable disproportionate prejudicial impact on an identifiable group distinguished by national origin, they would constitute racial discrimination in accordance with the notion of indirect discrimination.

6. Judge Iwasawa points out that international human rights courts and bodies, including the CERD Committee, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the European Court of Human Rights and the Inter-American Court of Human Rights, have embraced and developed the notion of indirect discrimination. If a rule, measure or policy that is apparently neutral has an unjustifiable disproportionate prejudicial impact on a certain protected group, it constitutes discrimination, notwithstanding that it is not specifically aimed at that group. The analysis of disproportionate impact requires a comparison between different groups. The context and circumstances in which the differentiation was introduced must be taken into account in determining whether the measure amounts to discrimination.

7. Judge Iwasawa further observes that the CERD Committee has applied the notion of indirect discrimination in the context of the treatment of non-citizens. For instance, after considering reports submitted by States parties, the Committee regularly adopts concluding observations that include recommendations on the treatment of non-citizens. In his view, paragraph 4 of the Committee's General Recommendation XXX on *discrimination against non-citizens* can be explained by the notion of indirect discrimination.

8. In the final part of his separate opinion, Judge Iwasawa addresses Qatar's claim of indirect discrimination in the present case. The Court's task is to determine whether the measures taken by the UAE on the basis of current nationality have an unjustifiable disproportionate prejudicial effect on an identifiable group distinguished by national origin. In order to make this determination, it is first necessary to identify a group that is distinguished by "national origin". It must then be assessed whether the measures have an unjustifiable disproportionate prejudicial impact on that protected group compared to other groups. With regard to the first issue, Judge Iwasawa believes that the Court does not possess the facts necessary to establish whether a CERD-protected group can be distinguished by national origin. The examination of the second issue similarly requires extensive factual analysis. Moreover, Judge Iwasawa considers that both issues constitute the very subject-matter of the dispute on the merits and should therefore be determined at the merits stage.

9. For these reasons, Judge Iwasawa concludes that the Court should have declared that the first preliminary objection of the UAE does not have an exclusively preliminary character. He notes that this conclusion should not be interpreted as prejudging in any way the potential findings of the Court on the merits.

Declaration of Judge *ad hoc* Daudet

1. Judge *ad hoc* Daudet voted in favour of all the paragraphs of the operative part of the present Judgment. Indeed, he agrees with the view expressed by the Court regarding the interpretation of Article 1, paragraph 1, of CERD, namely that "national origin" is distinct from "nationality". In Judge *ad hoc* Daudet's opinion, this consideration does not require an examination of any question on the merits. The objection raised to jurisdiction thus possesses an exclusively preliminary character.

2. He points out, however, that this finding does not justify the actions taken by the UAE against Qatar, which he considers to be human rights violations under several international conventions.

3. Judge *ad hoc* Daudet also recalls that the Court's 2018 Order indicating provisional measures is binding on the Parties. In his view, this has enabled Qatar to recover part of its rights, subject to the proper implementation of the Order by the UAE.

4. Lastly, after contemplating the possibility of a peaceful resolution of the dispute through a conciliation process under CERD, Judge *ad hoc* Daudet welcomes the reconciliation process initiated between the Gulf countries at the time of delivery of the Court's Judgment.

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