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**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2018

Public sitting

held on Wednesday 27 June 2018, at 10 a.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 2018

Audience publique

tenue le mercredi 27 juin 2018, à 10 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
 Cañado Trindade
 Gaja
 Sebutinde
 Bhandari
 Robinson
 Crawford
 Gevorgian
 Salam
Judges *ad hoc* Cot
 Daudet

 Registrar Couvreur

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

M. Couvreur, greffier

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as Agent;

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Lord Peter Goldsmith, Q.C., Debevoise & Plimpton LLP, member of the Bars of England and Wales and Paris,

Mr. David W. Rivkin, Debevoise & Plimpton LLP, member of the Bar of New York,

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

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Mr. Khalid Fahad Al Hajri, Deputy Ambassador of the State of Qatar to the Netherlands,

Dr. Ahmad Al-Manna, Ministry of Foreign Affairs,

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

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

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

Mr. Ahmad Al Basti, Ministry of Foreign Affairs,

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

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

M. Ahmad Al Basti, ministère des affaires étrangères,

Ms. Hanadi Al-Shafei, Ministry of Foreign Affairs,

Mr. Rashed Al Nuaimi, Ministry of Foreign Affairs,

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comme conseillère.

The PRESIDENT: Please be seated. The sitting is open. The Court meets today under Article 74, paragraph 3, of the Rules of Court, to commence hearings on the Request for the indication of provisional measures submitted by the State of Qatar in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*. This morning the Court shall hear the observations of Qatar.

For reasons duly made known to me, Judge Donoghue is unable to sit with us in this hearing.

The Court does not include upon the Bench a judge of the nationality of either of the Parties. Both Parties have therefore availed themselves of the right, under Article 31, paragraph 3, of the Statute, to choose a judge *ad hoc*. Qatar has chosen Mr. Yves Daudet, and the United Arab Emirates, Mr. Jean-Pierre Cot.

Article 20 of the Statute provides “[e]very Member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously”. Pursuant to Article 31, paragraph 6, of the Statute, the same provision applies to judges *ad hoc*. Notwithstanding the fact that Mr. Daudet and Mr. Cot have already served as judges *ad hoc* and have made solemn declarations in previous cases, Article 8, paragraph 3, of the Rules of Court requires that they each make a further solemn declaration in the present case.

In accordance with custom, I shall first say a few words about the career and qualifications of each judge *ad hoc* before inviting him to make his solemn declaration.

M. Daudet, de nationalité française, est docteur en droit et agrégé de droit public et de science politique. Il est actuellement le président du Curatorium de l’Académie de droit international de La Haye et professeur émérite de l’Université de Paris I (Panthéon-Sorbonne), dont il a été premier vice-président. Il a occupé divers postes d’enseignement et de recherche en France, à l’île Maurice, au Maroc et en Côte d’Ivoire. Il a été membre de la délégation française à la conférence des Nations Unies chargée d’élaborer un code international de conduite pour le transfert de technologie. Il a été désigné juge *ad hoc* à plusieurs reprises. M. Daudet a en effet exercé ces fonctions en l’affaire du *Différend frontalier (Burkina Faso/Niger)*, il les exerce aujourd’hui encore en l’affaire relative à l’*Obligation de négocier un accès à l’océan Pacifique (Bolivie c. Chili)*, en l’affaire relative à des *Violations alléguées de droits souverains et d’espaces maritimes dans la mer*

des Caraïbes (Nicaragua c. Colombie), et en l'affaire relative au *Différend concernant le statut et l'utilisation des eaux du Silala (Chili c. Bolivie)*. Il est par ailleurs membre du comité de rédaction de *l'Annuaire français de droit international*, et membre de la société française pour le droit international et de l'Association de droit international. Il a publié de nombreux ouvrages et articles dans différents domaines du droit international.

M. Jean-Pierre Cot, de nationalité française, est titulaire d'un doctorat de droit public et agrégé de droit. Il est membre du Tribunal international pour le droit de la mer. M. Cot est également professeur émérite à l'Université Paris 1 (Panthéon-Sorbonne). Entre 1981 et 1982, il a été ministre chargé de la coopération et du développement au sein du Gouvernement français, avant d'être élu au Conseil exécutif de l'Unesco, en 1983. Pendant plusieurs années, M. Cot a été membre du Parlement européen, au sein duquel il a exercé d'éminentes fonctions, notamment celles de président de la Commission des budgets et de vice-président du Parlement européen. Il a été désigné plusieurs fois comme juge *ad hoc* à la Cour, et a ainsi siégé en l'affaire du *Différend territorial et maritime (Nicaragua c. Colombie)*, en l'affaire relative à des *Epanrages aériens d'herbicides (Equateur c. Colombie)*, en l'affaire relative à la *Délimitation maritime en mer Noire (Roumanie c. Ukraine)*, et dans l'affaire du *Différend frontalier (Bénin/Niger)*, ainsi que dans celle relative à la *Demande en interprétation de l'arrêt du 15 juin 1962 en l'affaire du Temple de Préah Vihéar (Cambodge c. Thaïlande) (Cambodge c. Thaïlande)*, et en l'affaire relative à des *Questions concernant la saisie et la détention de certains documents et données (Timor-Leste c. Australie)*. Il est l'auteur de nombreuses publications dans le domaine du droit international, du droit européen et des sciences politiques. Il est par ailleurs membre et ancien président de la Société française pour le droit international.

In accordance with the order of precedence fixed by Article 7, paragraph 3, of the Rules of Court, I shall first invite Mr. Cot to make the solemn declaration prescribed by the Statute, and I would request all those present to rise. Mr. Cot, you have the floor.

M. COT : Merci, Monsieur le président.

«Je déclare solennellement que je remplirai mes devoirs et exercerai mes attributions de juge en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience.»

Merci.

Le PRESIDENT : Je vous remercie. J'invite maintenant M. Daudet à faire la déclaration solennelle prescrite par le Statut. M. Daudet, vous avez la parole.

M. DAUDET : Merci, Monsieur le président.

«Je déclare solennellement que je remplirai mes devoirs et exercerai mes attributions de juge en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience.»

Le PRESIDENT : Je vous remercie. Veuillez vous asseoir. I take note of the solemn declarations made by Mr. Cot and Mr. Daudet, and declare them duly installed as judges *ad hoc* in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*.

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The proceedings in the present case were instituted on 11 June 2018 by the State of Qatar against the United Arab Emirates with regard to alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (I shall refer to this Convention, for convenience, as “CERD”). To found the jurisdiction of the Court, Qatar invokes Article 36, paragraph 1, of the Statute of the Court and Article 22 of CERD.

In its Application, Qatar contends that the case “concerns a legal dispute between Qatar and the UAE regarding the UAE’s deliberate and flagrant violations of the CERD”. According to Qatar, “[t]he UAE, unlawfully seeking to pressure Qatar to allow it to interfere in Qatari sovereignty over its affairs, has targeted Qataris and their families for discriminatory treatment”. Qatar further alleges that “[t]he UAE’s chosen approach contravenes core principles of international human rights law, including the protections contained in the CERD”.

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

Request, Qatar states that “[p]rovisional measures are requested in this case to protect against further, irreparable harm to the rights of Qataris and their families under the CERD, which continue to be compromised with impunity”. Qatar adds that it “requests that the Court indicate provisional measures to protect and preserve these rights from any further harm and to prevent aggravation or extension of the dispute, pending the determination of the merits of the issues raised by the Application”.

I shall now ask the Registrar to read out the passage from the request specifying the provisional measures which the Government of Qatar is asking the Court to indicate. Monsieur le greffier.

The REGISTRAR: Merci, Monsieur le président.

“On the basis of the facts set forth [in the Request] and in the Application, and in order to prevent irreparable prejudice to the rights of Qatar and Qataris under the CERD, Qatar, in its own right and as *parens patriae* of its citizens, respectfully requests the Court as a matter of urgency to indicate the following provisional measures, which are clearly directly linked to the rights that form the subject matter of the dispute, pending its determination of this case on the merits:

- (a) [t]he UAE shall cease and desist from any and all conduct that could result, directly or indirectly, in any form of racial discrimination against Qatari individuals and entities by any organs, agents, persons, and entities exercising UAE governmental authority in its territory, or under its direction or control. In particular, the UAE shall immediately cease and desist from violations of the human rights of Qataris under the CERD, including by:
- (i) suspending operation of the collective expulsion of all Qataris from, and ban on entry into, the UAE on the basis of national origin;
 - (ii) taking all necessary steps to ensure that Qataris (or persons with links to Qatar) are not subjected to racial hatred or discrimination, including by condemning hate speech targeting Qataris, ceasing publication of anti-Qatar statements and caricatures, and refraining from any other incitement to racial discrimination against Qataris;
 - (iii) suspending the application of its Federal Decree-Law no. (5) of 2012, On Combatting Cybercrimes, to any person who ‘shows sympathy . . . towards Qatar’ and any other domestic laws that (*de jure* or *de facto*) discriminate against Qataris;
 - (iv) taking the measures necessary to protect freedom of expression of Qataris in the UAE, including by suspending the UAE’s closure and blocking of transmissions by Qatari media outlets;
 - (v) ceasing and desisting from measures that, directly or indirectly, result in the separation of families that include a Qatari, and taking all necessary steps to

ensure that families separated by the Discriminatory Measures are reunited (in the UAE, if that is the family's preference);

- (vi) ceasing and desisting from measures that, directly or indirectly, result in Qataris being unable to seek medical care in the UAE on the grounds of their national origin and taking all necessary steps to ensure that such care is provided;
 - (vii) ceasing and desisting from measures that, directly or indirectly, prevent Qatari students from receiving education or training from UAE institutions, and taking all necessary steps to ensure that students have access to their educational records;
 - (viii) ceasing and desisting from measures that, directly or indirectly, prevent Qataris from accessing, enjoying, utilizing, or managing their property in the UAE, and taking all necessary steps to ensure that Qataris may authorize valid powers of attorney in the UAE, renew necessary business and worker licenses, and renew their leases; and
 - (ix) taking all necessary steps to ensure that Qataris are granted equal treatment before tribunals and other judicial organs in the UAE, including a mechanism to challenge any discriminatory measures;
- (b) [t]he UAE shall abstain from any measure that might aggravate, extend, or make more difficult resolution of this dispute; and
- (c) [t]he UAE shall abstain from any other measure that might prejudice the rights of Qatar in the dispute before the Court.”

The PRESIDENT: Thank you. Immediately after the filing of the Application and the Request for the indication of provisional measures, the Registrar, in accordance with Article 38, paragraph 4, and Article 73, paragraph 2, of the Rules of Court, transmitted certified copies thereof to the Government of the United Arab Emirates. He also notified the Secretary-General of the United Nations.

According to Article 74 of the Rules of Court, a request for the indication of provisional measures shall have priority over all other cases. Consequently, the Parties were informed by the Court that the date for the opening of the oral proceedings contemplated in Article 74, paragraph 3, of the Rules of Court, during which they could present their observations on the Request for the indication of provisional measures, had been set at 27 June 2018, at 10 a.m.

I note the presence before the Court of the Agents and counsel of the two Parties. For the purposes of this first round of oral argument, each of the Parties will have available to it a three-hour sitting. The Court will hear Qatar, which has submitted the Request, this morning until 1 p.m. It will hear the United Arab Emirates tomorrow between 10 a.m. and 1 p.m. The Parties will

then have the possibility to reply: Qatar will have the floor again on Friday 29 June at 10 a.m., and the United Arab Emirates will take the floor in turn on Friday afternoon at 4.30 p.m. Each of the Parties will have a maximum time of one and a half hour in which to present its reply.

Qatar may, if required, avail itself of a short extension beyond 1 p.m. today, in view of the time taken up by the opening part of these oral proceedings. The Parties are of course not required to use the full amount of time allotted to them.

Before giving the floor to Dr. Mohammed Abdulaziz Al-Khulaifi, Agent of Qatar, I wish to draw the attention of the Parties to Practice Direction XI, which reads as follows:

“In the oral pleadings on requests for the indication of provisional measures parties should limit themselves to what is relevant to the criteria for the indication of provisional measures as stipulated in the Statute, Rules and jurisprudence of the Court. They should not enter into the merits of the case beyond what is strictly necessary for that purpose.”

I now call upon Dr. Al-Khulaifi, Agent of Qatar. You have the floor, Sir.

Mr. AL-KHULAIFI:

I. INTRODUCTORY STATEMENT

1. Mr. President and honourable Members of the Court, it is indeed a great honour for me to appear today before you as the Agent of Qatar at the oral hearing on Qatar’s request for indication of provisional measures, proceedings instituted by Qatar against the United Arab Emirates. This case concerns the UAE’s violations of the Convention on the Elimination of All Forms of Racial Discrimination, which I will refer to as the Convention.

2. Historically, the people of Qatar and its neighbours have been close. For decades, Qataris and Emiratis have studied and worked together, prayed together, and married into each other’s families. Despite these close ties, the UAE has enacted a series of broad, discriminatory measures against my country and its people on the basis of their Qatari nationality. The UAE’s actions last June and since are dividing nearly every aspect of deep connection between Qatar and its neighbour.

3. “There is no justification for racial discrimination, in theory or in practice, anywhere.” Those are the words of the preamble to the Convention, and it is that command that Qatar is here to vindicate. The Convention requires States to respect and protect fundamental human rights and the

dignity of human beings against racial discrimination. And it vests this Court with the jurisdiction to uphold those rights in the event of their breach.

4. Despite being party to the Convention, for over a year, the UAE has been imposing discriminatory measures targeting Qataris based on their national origin, in direct violation *of* the Convention. On 5 June 2017, and during the holy month of Ramadan, the UAE took the dramatic and draconian step of severing diplomatic relations with Qatar: it immediately ousted Qatari diplomats from the UAE and cut off direct communications. The UAE expelled all Qataris within its territory, giving them only 14 days to leave and ordered Emiratis to leave Qatar or face civil and criminal sanctions. The UAE continues to prohibit Qataris from entering the UAE, closing its airspace and seaports to Qataris and prohibiting all inter-State transport that once connected the two countries. The UAE also is banning free opinion and expression, blocking access to media outlets with any connection to Qatar and penalizing any expression of so-called “sympathy” for Qatar with up to 15 years of imprisonment.

5. As a result of the UAE’s discriminatory measures and campaign of hatred against Qataris, my people have been and continue to be torn apart from their closest neighbours, family members, friends, and crucial supplies and livelihoods on which they rely. These severe, lasting and continuing harms to Qataris are the reason that Qatar determined it had no choice but to institute proceedings in this Court, which stands as the beacon to the world for ensuring respect for human rights and the peaceful resolution of disputes between States.

6. The UAE has maintained its threat to continue the discriminatory measures indefinitely if Qatar does not agree to a list of 13 political demands. The demands are far-reaching and include, among others, that Qatar “align itself with the other Gulf and Arab countries militarily, politically, socially, and economically”, that Qatar “shut down Al Jazeera and its affiliate stations”, and that Qatar “consent to monthly audits” to assess its compliance with the demands¹. Such far-reaching demands are based on the preposterous allegation that Qatar “undermine[s] the security and stability of the region”².

¹ *The 13 Demands on Qatar from Saudi Arabia, Bahrain, UAE and Egypt*, THE NATIONAL (23 June 2017), Application of Qatar (AQ), Ann. 7; judges’ folder, tab 6.

² Statement of Support for Blockade and Cessation of Ties by the UAE Ministry of Foreign Affairs (5 June 2017), AQ, Ann. 2; judges’ folder, tab 6.

7. Mr. President and honourable Members of the Court, let me be clear on this point: this allegation is utterly false. The real purpose of the demands is to undermine Qatar's sovereignty by seeking to interfere with its internal affairs and dictate its international relations. In any event, UAE's allegations are not relevant to this issue before you today. Today, the issue is the urgent need to preserve Qatar's right to ensure respect for the rights of its nationals under the Convention by preventing further irreparable damage to those rights.

8. The UAE's collective expulsion of Qataris and ban on their travel to the UAE has had and continues to have a devastating impact on Qataris and their families. Thousands of Qataris are unable to return to the UAE, are separated from their family there, and are losing their homes, their jobs, their property, access to medical care, and the opportunity to pursue their education. This reality persists to this very day, as the human rights violations resulting from the UAE's discriminatory measures are continuing.

9. A number of human rights bodies and organizations have condemned the UAE's discriminatory measures and emphasized their negative impact on Qataris. For example, the Office of the United Nations High Commissioner for Human Rights (OHCHR) reported that "many of these measures have a potentially durable effect on the enjoyment of the human rights and the fundamental freedoms of those affected", which is causing "a major psychological impact on the overall population"³.

10. There is no opportunity for Qataris to seek justice for these human rights abuses. The UAE has closed its borders to Qataris who might otherwise seek remedy in its courts. The UAE has fostered such an environment of hate against Qatar and Qataris that individuals in the UAE are afraid even to speak to family members living in Qatar. There have also been instances where lawyers in the UAE will not represent Qataris before UAE courts and institutions for fear that this would be interpreted as an expression of "sympathy" toward Qatar, which is now a crime in the UAE.

11. Qatar's decision to seek the protection of this Court was not an easy one. We are neighbours with the UAE. But all attempts by Qatar and multiple third States to resolve this crisis

³ OHCHR Technical Mission to the State of Qatar, 17-24 Nov. 2017, *Report on the Impact of the Gulf Crisis on Human Rights*, Dec. 2017, paras. 60, 62, AQ, Ann. 16; judges' folder, tab 9.

have been rejected by the UAE. Qatar has been left with no choice but to pursue legal action before this Court to obtain binding resolution of this legal dispute. Qatar also has taken the step of requesting that the Court indicate provisional measures, because without them the suffering of thousands of Qataris will continue unabated: without the Court's intervention, Qatari-Emirati families will continue to be forced to live apart or fear permanent separation if they travel to the UAE, students will continue to be deprived of the opportunity to complete their education in the UAE *or* even to continue their studies elsewhere since UAE universities refuse to provide them with their transcripts, and thousands will remain unable to access their homes, personal *properties*, or medical care in the UAE. Such a situation cannot be tolerated until the delivery of a final judgment in this case.

12. On behalf of the State of Qatar, I respectfully urge the Court to act urgently in order to prevent further irreparable prejudice caused by the UAE's violations of the Convention and to alleviate the suffering needlessly imposed on Qatari families and individuals.

13. Mr. President, Qatar's distinguished counsel will now explain the reasons why the Court should order the provisional measures we have requested.

14. *First*, Mr. Donald Francis Donovan will address the Court's authority to order provisional measures and the existence of the Court's prima facie jurisdiction.

15. *Second*, Ms Catherine Amirfar and Professor Pierre Klein will demonstrate, in two parts, that the provisional measures requested by Qatar relate to plausible rights asserted under the Convention.

16. *Finally*, Lord Peter Goldsmith will demonstrate that the provisional measures requested by Qatar are both justified and urgently required to prevent further irreparable harm to the rights guaranteed by the Convention.

17. Thank you, Mr. President and honourable Members of the Court. I now kindly ask ~~that~~ you *to* invite Mr. Donald Francis Donovan to address the Court.

The PRESIDENT: I thank the Agent of Qatar and I invite Mr. Donovan to take the floor. You have the floor.

Mr. DONOVAN:

II. THE COURT HAS PRIMA FACIE JURISDICTION OVER THE DISPUTE

1. Mr. President, honourable Members of the Court, it is an honour to appear again before this Court and to do so in the representation of the State of Qatar .

2. Article 41 (1) of the Statute grants the Court the “power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party”. As the Court explained in *LaGrand*, when it clarified that its provisional measures have legally binding character, “the power to indicate provisional measures entails that such measures should be binding, inasmuch as the power in question is based on the necessity . . . to safeguard, and to avoid prejudice to, the rights of the parties as determined by the final judgment of the Court”⁴. In the end, the Court issues provisional measures in order to preserve its very capacity to fulfil its judicial function — to preserve its capacity to provide meaningful and effective relief once it has determined, after the full course of proceedings, the rights and obligations of the parties.

3. The standards that guide the Court in determining whether the measures requested in a specific case should be granted are both well established and straightforward.

4. *First*, the Court must be satisfied that it has prima facie jurisdiction over the dispute. *Second*, the rights asserted by the party requesting provisional measures must be “at least plausible”⁵, and there must be a link between the rights whose protection is sought and the measures requested. *Third and finally*, the measures sought must be urgently needed, in the sense that if the relief were not granted, the requesting party would be at risk of irreparable prejudice — and hence the Court might be deprived of its capacity fully to vindicate the requesting party’s rights.

5. These standards are plainly met in this case. Qatar has come before the Court seeking urgent relief in the face of ongoing measures that constitute explicit racial discrimination against Qataris on the basis of their national origin, in violation of Articles 2, 4, 5, 6, and 7 of the

⁴ *LaGrand (Germany v. United States of America), Judgment, I.C.J. Reports 2001*, p. 503.

⁵ E.g., *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1156, para. 71 (hereinafter “*Immunities and Criminal Proceedings, Provisional Measures, Order*”).

Convention on the Elimination of All Forms of Racial Discrimination. Those measures have, in fact, caused great harm to the fundamental human rights of the persons against whom they are aimed. Just last year the Court expressly recognized that rights under the Convention are of a nature “that prejudice to them is capable of causing irreparable harm”⁶ — those are the words of the Court. And the Court has indicated provisional measures in both of the cases invoking the Convention that have previously come before it⁷.

A. Prima facie jurisdiction under Article 22

6. So, with the Court’s permission, I will address the first requirement, that is, the Court’s prima facie jurisdiction.

7. As the Court has repeatedly held, at this stage of the proceedings, it, in its own words, “need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case”⁸. Instead, it need only find that “the provisions relied on by the applicant appear, prima facie, to afford a basis on which [the Court’s] jurisdiction could be founded”⁹. Only if the Court, again in the Court’s words, “manifestly lacks jurisdiction” to entertain the Applicant State’s application, will the Court decline to indicate provisional measures¹⁰.

8. Here, Qatar invokes the Court’s jurisdiction pursuant to Article 22 of the Convention. The full text of the Convention is at tab 1 of your folder. Article 22 provides:

“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

⁶ *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. 104, para. 96 (hereinafter “*Ukraine v. Russian Federation, Provisional Measures, Order*”).

⁷ *Ibid.*, para. 106; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 398, para. 149 (hereinafter “*Georgia v. Russian Federation, Provisional Measures, Order*”).

⁸ *Jadhav Case (India v. Pakistan), Provisional Measures, Order of 18 May 2017*, para. 15 (hereinafter “*Jadhav Case, Provisional Measures, Order*”), para. 15; see also *Immunities and Criminal Proceedings, Provisional Measures, Order*, p. 1155, para. 31.

⁹ *Jadhav Case, Provisional Measures, Order*, para. 15; see also *Immunities and Criminal Proceedings, Provisional Measures, Order*, p. 1155, para. 31.

¹⁰ *Legality of Use of Force (Yugoslavia v. United States of America), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, p. 925, para. 29.

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.¹¹”

9. There can be no serious argument here that the components of jurisdiction *ratione personae*, *ratione temporis*, *ratione loci*, and *ratione materiae* are definitively satisfied, let alone satisfied on a *prima facie* basis¹².

10. *First*, as to jurisdiction *ratione personae*. Both Applicant Qatar and Respondent the UAE are parties to the Convention. Qatar acceded on 22 July 1976, and the UAE on 20 June 1974. On accession, neither made any reservation to Article 22.

11. *Second*, as to jurisdiction *ratione temporis*. All of the allegations on which Qatar relies relate to the facts that occurred after both parties had acceded to the Convention.

12. *Third*, as to jurisdiction *ratione loci*. As this Court recognized in *Georgia v. Russian Federation*, there is no general provision limiting the territorial scope of the Convention’s obligations¹³, but in any event, all or virtually all of the factual allegations set forth in the Application concern discriminatory acts being taken within the UAE’s own territory.

13. *Finally*, as to jurisdiction *ratione materiae*. Article 22 requires that there be a “dispute arising out of the interpretation or application” of the Convention¹⁴.

14. In the words of the Court, “[a] dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons”¹⁵. The Court has held that a “dispute” exists between two States when they “hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations”¹⁶. Prior exchanges between the parties may constitute evidence of a dispute even if they do not *explicitly* refer to the particular treaty at issue, so long as they refer to the *subject-matter* of the treaty (in the Court’s words) “with sufficient clarity” to allow the respondent State to identify that “there is, or may be, a dispute with

¹¹ International Convention on the Elimination of All Forms of Racial Discrimination, 4 Jan. 1969, *United Nations Treaty Series (UNTS)*, Vol. 660, p. 195 (hereinafter “CERD”); judges’ folder, tab 1.

¹² See *Application of the Convention on the Prevention and Punishment of the Crimes of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, *Provisional Measures, Order of 8 April 1993*, *I.C.J. Reports 1993*, p. 11, para. 14.

¹³ *Georgia v. Russian Federation, Provisional Measures, Order*, p. 386, para. 109.

¹⁴ *Ukraine v. Russian Federation, Provisional Measures, Order*, para. 22.

¹⁵ *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11.

¹⁶ *Ukraine v. Russian Federation, Provisional Measures, Order*, para. 22 (citing *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (II)*, p. 26, para. 50).

regard to that subject matter”¹⁷. Of course, if the parties *have* made explicit reference to the specific treaty — as both Qatar and the UAE have done in this case — such an express specification “would remove any doubt about one State’s understanding of the subject-matter in issue and put the other on notice”¹⁸.

15. Here, there is no doubt whatsoever about the existence of a dispute on any standard, let alone *prima facie*. The exchanges between Qatar and the UAE over the last year show that the two States squarely disagree about whether a series of measures enacted by the UAE violate its obligations under the Convention¹⁹. This is more than sufficient to establish *prima facie* the existence of a “dispute between the Parties concerning the interpretation and application of CERD,” which as the Court held in *Ukraine v. Russian Federation*, requires only that there be evidence of “a disagreement on a point of law or fact between the two States”, and that the “disagreement concerns ‘interpretation or application’” of the Convention.

16. Mr. President, honourable Members of the Court, we know exactly when this dispute first materialized. On 5 June 2017, the UAE and other States enacted a series of discriminatory measures targeting Qataris on the basis of their nationality. As Dr. Al-Khulaifi explained, and as we will elaborate this morning, these measures had an immediate impact on the human rights of Qataris, and are continuing today. From the moment the discriminatory measures were imposed, Qatar objected — publicly and often directly in the presence of UAE representatives — to the UAE’s human rights abuses. Qatar described these abuses in clear terms, as violations of the UAE’s human rights obligations under international law. And the UAE, after hearing these allegations, stated outright that, in its view, its actions were legal and that it was meeting its obligations under international law generally and under the Convention specifically.

17. For one example, in September 2017, His Highness the Emir of Qatar raised the issue before the United Nations General Assembly at the General Debate of the 72nd Session. His Highness described how the measures imposed by the UAE and other States had affected, in his

¹⁷ *Application of the International Convention on All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)* (hereinafter “*Georgia v. Russian Federation, Preliminary Objections, Judgment*”), p. 85, para. 30.

¹⁸ *Ibid.*

¹⁹ *Ukraine v. Russian Federation, Provisional Measures, Order*, paras. 23, 37; *Georgia v. Russian Federation, Provisional Measures, Order*, p. 353, para. 112.

words: “all aspects of life” for his people²⁰. He spoke of the severing of family ties, and violations of (again in his words) “the basic human rights to work, education, freedom of movement and the right to dispose of private property”²¹. He called out the UAE’s actions as “arbitrary measures” that violate human rights conventions²². And then in concluding, he, in his words, “renew[ed] the call for unconditional dialogue based on mutual respect for sovereignty”²³. But addressing the General Assembly several days later, the UAE’s Minister of Foreign Affairs starkly took issue with this position, stating that the measures “are consistent with international law”²⁴.

18. Also in September 2017, His Excellency Sheikh Mohammed bin Abdulrahman bin Jassim Al-Thani, Qatar’s Deputy Prime Minister and Minister of Foreign Affairs, delivered a statement before the Human Rights Council at its 36th Session in Geneva²⁵. His Excellency described the measures being imposed against Qatar by the UAE and the other States and recounted their devastating human rights impact. He stated explicitly that the discriminatory measures violate international law and constitute a serious violation of Qataris’ civil, economic, and social rights. His Excellency also reiterated Qatar’s readiness to engage in dialogue to end the crisis.

19. That same week, the UAE explicitly *denied* that its actions were in violation of the Convention. In August 2017, several Special Rapporteurs of the Human Rights Council had sent a joint letter to the UAE to bring to its attention the human rights violations resulting from its actions against Qataris²⁶. In its reply to the letter, the UAE stated unequivocally that, notwithstanding the

²⁰ Address by H. H. Sheikh Tamim bin Hamad Al-Thani, Emir of the State of Qatar, at the General Debate of the 72nd Session of the United Nations General Assembly (19 Sept. 2017), AQ, Ann. 15.

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ Statement by H.H. Sheikh Abdullah bin Zayed Al Nahyan, Minister of Foreign Affairs and International Co-operation of the United Arab Emirates, at the General Debate of the 72nd Session of the United Nations General Assembly, dated 22 Sept. 2017, https://gadebate.un.org/sites/default/files/gastatements/72/ae_en.pdf.

²⁵ Address by H.E. Sheikh Mohammed bin Abdulrahman bin Jassim Al-Thani, Deputy Prime Minister and Minister of Foreign Affairs of the State of Qatar, at the 36th Regular Session of the United Nations Human Rights Council (11 Sept. 2017), <http://webtv.un.org/watch/qatar-1st-meeting-36th-regular-session-human-rights-council/5571405779001/?term=&lan=original>; Permanent Mission of the State of Qatar to the United Nations Office in Geneva, Switzerland, *HE the Foreign Minister delivers a statement before the 36th Session of the Human Rights Council* (11 Sept. 2017), AQ, Ann. 13.

²⁶ See Joint Communication from the Special Procedures Mandate Holders of the Human Rights Council to the United Arab Emirates (18 Aug. 2017), AQ, Ann. 11.

allegations, “[t]he United Arab Emirates continues to uphold” the Convention and “is fully aware of its obligations and commitments in that regard”²⁷.

20. And, finally, the UAE has expressed its disagreement with Qatar’s legal position in the most telling way possible — that is, by steadfastly refusing to lift or withdraw the discriminatory measures that Qatar describes as human rights violations.

21. This Court has previously explained that both a party’s conduct and its statements are relevant to determining the existence of a dispute²⁸. On this record, there can be no question that there is a dispute between the parties before this Court about whether the UAE is in breach of its obligations under the Convention. An objective assessment of the evidence before the Court reveals the existence of a dispute on any standard, let alone a *prima facie* **standard one**.

B. Preconditions to Jurisdiction under Article 22

22. Mr. President, honourable members of the Court, the Court determined in *Georgia v. Russian Federation* that Article 22 of the Convention establishes preconditions to the *seisin* of the Court. Specifically, the dispute before the Court must be one “which is not settled by negotiation or by the procedures expressly provided for in this Convention”²⁹.

23. The Court is familiar, of course, with the discussion as to whether these preconditions are alternative or cumulative. We have our views on that question and will express them at the appropriate time. But this is not that time. At this stage of the proceedings, the Court “need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case”³⁰. At the exact same juncture in *Ukraine v. Russian Federation*, the Court expressly said that it “need not make a pronouncement on this issue” — that is, of the nature of the preconditions of Article 22 — “at this stage of the proceedings”³¹.

²⁷ The Permanent Mission of the United Arab Emirates to the United Nations Office and Other International Organizations at Geneva Reply to the Joint Communication from the Special Procedures Mandate Holders of the Human Rights Council (18 Sept. 2017), AQ, Ann. 14.

²⁸ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2016 (II), p. 850, paras. 39-40.

²⁹ *Ukraine v. Russian Federation, Provisional Measures, Order*, paras. 42, 59; *Georgia v. Russian Federation, Preliminary Objections, Judgment*, p. 128, para. 141.

³⁰ *Ukraine v. Russian Federation, Provisional Measures, Order*, para. 17.

³¹ *Ibid.*, para. 60.

24. Indeed, in both prior cases raising Article 22 of the Convention, *Georgia v. Russian Federation* and *Ukraine v. Russian Federation*, the Court concluded that it had prima facie jurisdiction even though in both cases, the Applicant States had not brought the dispute to the attention of the CERD Committee³². In both cases, the Court's prima facie jurisdiction was founded on the Applicant's showing that it had satisfied one of the two preconditions set out in Article 22 of the Convention; namely, negotiation.

25. There is no reason for the Court to take a different approach here. While Qatar did make recourse to the procedure under Article 11 of the Convention in March of this year by submitting a communication to the CERD Committee, it does not rely on this communication for the purposes of showing prima facie jurisdiction here. The only remaining question therefore for my purposes is whether Qatar has, prima facie, satisfied the negotiation precondition and thereby established a basis on which the Court's jurisdiction over the merits could be founded. This is a test that is easily met here.

26. Mr. President, honourable Members of the Court, when the dispute first arose, the very first act that the UAE took against Qatar was to sever diplomatic relations. Qatari diplomats were given just 48 hours to leave the UAE, and the UAE closed its embassy in Doha and removed all staff³³. To this day, there continue to be no official channels of communication between the States. The message from the UAE was clear from the outset: we're not interested in talking.

27. Notwithstanding that obstacle, Qatar has made genuine attempts to negotiate with the UAE in order to bring an end to the dispute and to the human rights violations that continue to impose suffering on its people. But the UAE has unabashedly stated its unwillingness to talk, and has continued to do so to this date.

28. Just days after enacting the discriminatory measures, the UAE Minister of State for Foreign Affairs reiterated the message the UAE had sent when it severed diplomatic relations. Specifically, he told the Associated Press that there was "*nothing to negotiate*" with Qatar³⁴.

³² *Ukraine v. Russian Federation, Provisional Measures, Order*, p. 353, paras. 116-117.

³³ Statement of Support for Blockade and Cessation of Ties by the UAE Ministry of Foreign Affairs (5 June 2017), AQ, Ann. 2; judges' folder, tab 6.

³⁴ Jon Gambrell, *Emirati Diplomat to AP: "Nothing to Negotiate" with Qatar*, *US News*, 7 June 2017, <https://apnews.com/3a69bad153e24102a4dd23a6111613ab>.

29. Several weeks later, the UAE identified exactly what it was unwilling to negotiate. Using His Highness the Emir of Kuwait as a go-between, the UAE, in co-ordination with other States, issued the so-called “thirteen demands”. The demands constitute 13 draconian measures by which the UAE insists that Qatar effectively hand over its sovereign authority as a condition of the lifting of the discriminatory measures. As Dr. Al-Khulaifi explained, they contemplate remarkable intrusions into Qatar’s internal and external affairs and purport to dictate Qatar’s military, political, social and economic policy, as well as its relations with third States. They include demands that free expression be suppressed within and outside Qatar by shutting down Al Jazeera and other stations. And they would even require Qatar to “consent to monthly audits” for potentially years to come to assess its compliance with the demands³⁵.

30. After issuing the 13 demands, the UAE, in conjunction with the States with which it had issued those demands, stated flatly that those demands were “non-negotiable”³⁶. *Non-negotiable*. Either Qatar wholly capitulates, or the discriminatory measures stay in place indefinitely. And the UAE has not withdrawn that statement or withdrawn the discriminatory measures.

31. On 5 July 2017, upping the ante even more, the UAE, along with other States, issued a list of “six principles”, with which it insisted Qatar must comply as a precondition to lifting the measures³⁷. Several weeks later, His Highness the Emir of Qatar delivered his first public address since the commencement of the measures, and stated that Qatar is, in his words, “ready for dialogue and settlement” of all issues³⁸. In direct response to the speech, the UAE’s Minister of State for Foreign Affairs reiterated that there could be no dialogue until Qatar revised its policies³⁹.

³⁵ *The 13 Demands on Qatar from Saudi Arabia, Bahrain, UAE and Egypt*, *The National*, 23 June 2017, Ann. 7.

³⁶ Naser Al Wasmi, *UAE and Saudi put pressure on Qatar ahead of demands deadline*, *The National*, 28 June 2017), <https://www.thenational.ae/world/uae-and-saudi-put-pressure-on-qatar-ahead-of-demands-deadline-1.92119>.

³⁷ Ann. 9, *Full joint statement of boycotting countries on Qatar crisis*, *Al Arabiya English*, 5 July 2017.

³⁸ *Emir Speech in Full Text: Qatar Ready for Dialogue but won't Compromise on Sovereignty*, Peninsula Qatar, 22 July 2017, <https://thepeninsulaqatar.com/article/22/07/2017/Emir-speech-in-full-text-Qatar-ready-for-dialogue-but-won%E2%80%99t-compromise-on-sovereignty>.

³⁹ *UAE Minister: No Dialogue with Qatar until it Revises Policies*, Reuters, 22 July 2017, <https://www.reuters.com/article/us-gulf-qatar-emirates-idUSKBN1A700K>.

Later that month, the UAE and the other States made clear that the “six principles” were intended to supplement, not supplant, the original 13 demands⁴⁰.

32. In doing so, they also stated that any dialogue to resolve the dispute was conditional on Qatar complying with the 13 demands⁴¹. Needless to say, there can be no negotiation when one side states that there is nothing to negotiate because its demands are non-negotiable, or that negotiations cannot start until the other side makes utterly unacceptable concessions, or that the subject of the negotiations must be limited to implementation of one side’s demands.

33. The UAE’s refusal to consider anything less than full capitulation by Qatar as a condition of negotiations put an end to His Highness the Emir of Kuwait’s initial attempts to mediate the dispute in the summer of 2017. Still, Qatar continued to call for dialogue and expressed its desire to mediate. As I mentioned previously, in an address before the General Assembly in September, His Highness the Emir of Qatar reiterated Qatar’s “support[] since the beginning” for the mediation effort, and “renew[ed] the call for unconditional dialogue based on mutual respect for sovereignty”⁴². Although the UAE also nominally expressed support for the Kuwaiti mediation process, its stance on the 13 demands and the six principles made clear that its conception of negotiation did not square with the usual meaning of the term⁴³. Negotiation with no prospect of compromise is not negotiation.

34. Throughout the fall of 2017, the parties exchanged these positions before the United Nations General Assembly and the Human Rights Council, remaining at odds despite Qatar’s repeated calls for dialogue⁴⁴. Against this backdrop, Qatar looked to the annual Gulf Cooperation Council (GCC) Summit — scheduled to be held in Kuwait in December 2017 — as, in the words of Qatar’s Deputy Prime Minister and Minister for Foreign Affairs, a “golden

⁴⁰ See *Boycotting quartet reaffirms its demands on Qatar*, Economist Intelligence Unit Country Reports — Egypt Edition, 3 Aug. 2017, <https://country.eiu.com/article.aspx?articleid=1345752318&Country=Qatar&topic=Politics&subtopic=Forecast&subsubtopic=International+relations&u=1&pid=1325726316&oid=1325726316&uid=1>; *Four Arab States Double Down on Qatar Boycott*, *Agence France Presse*, 30 July 2017, <http://www.newagebd.net/article/20920/four-arab-states-double-down-on-qatar-boycott>.

⁴¹ *Ibid.*

⁴² Address by H.E. Sheikh Tamim bin Hamad Al-Thani, Emir of the State of Qatar, at the General Debate of the 72nd Session of the United Nations General Assembly, 19 Sept. 2017, Ann. 15.

⁴³ E.g. UAE Ministry of Foreign Affairs & International Cooperation, Arab Officials Demand Action from Qatar in Briefing with United Nations Correspondents, 20 July 2017, <https://www.mofa.gov.ae/EN/MediaCenter/News/Pages/20-07-2017-UAE-Qatar.aspx>.

⁴⁴ E.g., pp. 22-24, paras. 17-19 (Donovan).

opportunity” to start a dialogue⁴⁵. The GCC includes as members Qatar, Kuwait and others of the disputing States, and His Highness the Emir of Qatar and representatives of its Ministry of Foreign Affairs had repeatedly confirmed Qatar’s support for the Kuwaiti mediation and intention to participate in the Summit.

35. The result of the Summit surely proves the adage that actions speak louder than words. His Highness the Emir of Qatar travelled to Kuwait to attend the GCC Summit. However, while the Summit is typically attended by Heads of State or government, the UAE declined to send either, in a break from previous tradition⁴⁶.

36. In fact, only two countries sent Heads of State to the Summit: Kuwait and Qatar⁴⁷. The UAE *did* take occasion that week to announce the formation of a new partnership with another of the disputing States separate from the GCC⁴⁸. The message of this announcement, coupled with the UAE’s refusal to send its leaders to the GCC Summit, was clear: despite its statements to the contrary, it had no intention of negotiating within the regional framework. His Highness the Emir of Kuwait fully understood the situation: though the Summit was initially supposed to last two days, he called an end to the meeting within hours. In short, Qatar’s overture was rebuffed, and the “golden opportunity” was lost.

37. More recent exchanges between the parties similarly failed to bear fruit, and only served to illustrate the deadlock. In February 2018, just four months ago, Qatar’s Deputy Prime Minister and Minister for Foreign Affairs once again addressed the Human Rights Council in its 37th Session. Recalling his address last September, he informed the Council that the violations of human rights caused by what he termed the “unilateral coercive measures” remained ongoing⁴⁹. His Excellency also called to the attention of the Council a report by the Office of the

⁴⁵ Ministry of Foreign Affairs of the State of Qatar, *Foreign Minister: Qatar Sees Any GCC Meeting Golden Opportunity for Civilized Dialogue*, 22 Oct. 2017, <https://www.mofa.gov.qa/en/all-mofa-news/details/2017/10/22/foreign-minister-qatar-sees-any-gcc-meeting-golden-opportunity-for-civilized-dialogue>.

⁴⁶ Ahmed Hagagy, *Gulf rulers boycotting Qatar skip annual summit*, Reuters, 5 Dec. 2017, <https://www.reuters.com/article/us-gulf-qatar-summit/gulf-rulers-boycotting-qatar-skip-annual-summit-idUSKBN1DZ15U>.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*; Patrick Wintour, *UAE announces new Saudi alliance that could reshape Gulf relations*, *The Guardian*, 5 Dec. 2017, <https://www.theguardian.com/world/2017/dec/05/uae-saudi-arabia-alliance-gulf-relations-gcc>.

⁴⁹ Permanent Mission of Qatar to the United Nations Office in Geneva — Switzerland, *Statement of H.E. Deputy Prime Minister of Foreign Affairs to the 37th Human Rights Council*, 25 Feb. 2018, Ann. 19.

United Nations High Commissioner for Human Rights following its visit to Qatar in November 2017. That report, which my colleague Ms Amirfar will discuss, recounts at length the serious human rights harms being suffered by Qataris.

38. Exercising the right of reply before the Council, the UAE's Permanent Representative to the United Nations rejected Qatar's explicit mention of human rights violations, dismissing the measures as a "small political crisis"⁵⁰. While the Permanent Representative again referred to the UAE's ostensible support for the "existing Kuwaiti mediation efforts", he then left no question that the UAE had no intention of altering its position, affirming categorically that "[o]ur States will [] continue to exercise their sovereign right to boycott the Government of Qatar"⁵¹. This exchange made clear that both sides "remain[ed] adamant" in their respective positions, and equally made clear the UAE's refusal "to give way" on the issue of its continued violations⁵².

39. In late April of this year, despite the UAE's refusal to acknowledge the impacts of the discriminatory measures on Qataris, and the failure of all attempts up to that time to prompt negotiations, Qatar took the step of formally requesting negotiations to address its grievances under the Convention. Qatar's Minister of State for Foreign Affairs sent to his counterpart in the UAE a communication that the transmittal letter described as an "invitation to negotiate". The communication called to the attention of the UAE Foreign Minister the report issued in December 2017 by the Office of the United Nations High Commissioner for Human Rights, which had documented the "human rights violations suffered by nationals of Qatar" as a result of the UAE's coercive measures⁵³. He stated Qatar's position that these measures "violate the obligations of the UAE under the CERD and its underlying moral principles". The Minister expressly referred to the specific provisions of the Convention implicated by the UAE's actions, and called on the UAE "to enter into negotiations in order to resolve these violations and the effects thereof"⁵⁴.

⁵⁰ *Arab Quartet responds to Qatar's remarks at the United Nations Human Rights Council, Al Arabiya English*, 28 Feb. 2018, Ann. 20.

⁵¹ *Ibid.*

⁵² *South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment of 21 December 1962, I.C.J. Reports 1962*, p. 346.

⁵³ Request for Negotiation, H.H. Sultan Ben Saed Al-Marikhi, Qatar Minister of State for Foreign Affairs, to H.H. Anwar Gargash, UAE Minister of State for Foreign Affairs, AQ, Ann. 21.

⁵⁴ *Ibid.*

Further, the Minister stressed the urgency of commencing negotiations and indeed, proposed conducting negotiations within two weeks⁵⁵.

40. Mr. President, honourable Members of the Court, the UAE did not respond urgently. The UAE did not respond within two weeks. The UAE did not respond after two weeks. The UAE did not respond at all. Qatar's express, direct call for negotiations to resolve the dispute was, in short, simply ignored.

41. On this record, there can be no question that Qatar has genuinely attempted to negotiate with the UAE. Qatar has repeatedly called for negotiations to address the ongoing violations in a wide variety of fora. Qatar has repeatedly attempted to participate in negotiations, including by its continued support — in both word and deed — for the Kuwaiti mediation efforts. Finally, by its communication of 25 April 2018, Qatar expressly and unequivocally called on the UAE to negotiate directly. The UAE did not so much as trouble to respond.

42. The history of exchanges between the Parties thus clearly illustrates that, to use the words of the Court in *Ukraine v. Russian Federation*, Qatar “genuinely attempted to engage in negotiations” with the UAE, “with a view to resolving their dispute concerning the latter’s compliance with its substantive obligations under the . . . CERD”, and that Qatar “pursued these negotiations as far as possible”⁵⁶. The UAE, on the other hand, has either rebuffed Qatar’s offers or flat-out refused to respond, while refusing all the while to retreat from its position that its demands are non-negotiable. As Judge Greenwood stated in *Georgia v. Russian Federation*, recalling the jurisprudence of the Court, “a State cannot be required to persist in the face of such a reaction”⁵⁷. When the UAE’s unwillingness to negotiate became evident, Qatar turned to this Court.

43. Mr. President, honourable Members of the Court, in short, the circumstances under which Qatar invoked Article 22 of the Convention to initiate proceedings before the Court provide a fully sufficient basis to conclude that the prima facie standard of jurisdiction has been met.

⁵⁵ Request for Negotiation, H.H. Sultan Ben Saed Al-Marikhi, Qatar Minister of State for Foreign Affairs, to H.H. Anwar Gargash, UAE Minister of State for Foreign Affairs, AQ, Ann. 21.

⁵⁶ *Ukraine v. Russian Federation, Provisional Measures, Order*, para. 44.

⁵⁷ *Georgia v. Russian Federation, Preliminary Objections*, separate opinion of Judge Greenwood, p. 261, para. 12 (citing *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1998*, separate opinion of Judge Greenwood, p. 122, para. 20). See also *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, pp. 13-15.

44. I now request that you call on my colleague, Ms Amirfar, who will address the second requirement for provisional measures, that is, that the measures requested relate to plausible rights under the Convention. Thank you, Mr. President.

The PRESIDENT: I thank Mr. Donovan and I now call on Ms Amirfar to address the Court.

Ms AMIRFAR:

**III. THE PROVISIONAL MEASURES SOUGHT LINK TO PLAUSIBLE RIGHTS UNDER
ARTICLES 2 AND 5 OF THE INTERNATIONAL CONVENTION ON THE
ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

1. Mr. President, honourable Members of the Court, it is an honour to appear again before this Court, and today to do so on behalf of the State of Qatar.

2. Among the standards that the Court has identified as guiding its discretion to indicate provisional measures are that the rights asserted by the requesting party must be “at least plausible”⁵⁸, and that there exists a link between the rights whose protection is sought and the provisional measures requested⁵⁹. I will start by addressing generally the rights under the Convention asserted by Qatar and by providing the Court with the factual background needed to appreciate their plausibility. I will then turn to addressing the plausibility of the rights under Articles 2 and 5 of the Convention.

A. The basis for the rights claimed by Qatar under the Convention

3. The General Assembly of the United Nations adopted the Convention on 21 December 1965, representing a singular moment in the development of international human rights law, by codifying and expanding upon existing protections against racial discrimination. The ease of passage — by vote of 107 to none — was a testament to the consensus view of the international community that racial discrimination was an evil that needed to be eliminated⁶⁰. To quote the Convention’s preamble, its animating objective is to “adopt all necessary measures for speedily

⁵⁸ See *Ukraine v. Russian Federation, Provisional Measures, Order*, p. 21, paras. 63-64.

⁵⁹ *Ibid.*, para. 64.

⁶⁰ Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary*, 1 (2016).

eliminating racial discrimination in all its forms and manifestations”⁶¹. As Professor Thornberry has remarked: the Convention’s “emergence from drafting into the light of day was swift by UN standards, propelled forwards by an extraordinary political momentum”⁶².

4. In light of the Convention’s stated objective, the definition of “racial discrimination” in Article 1 (1) is a broad one, capturing “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin”⁶³. The definition in the Convention encompasses both direct and indirect discrimination, expressly reaching any action “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”⁶⁴.

5. Article 2 sets out the broad portfolio of obligations States undertake to ensure the elimination of racial discrimination, including obligations not to engage in any act or practice of racial discrimination against persons, groups of persons or institutions, and to rescind or nullify any laws or regulations that have the effect of creating or perpetuating racial discrimination⁶⁵. Articles 4, 5, 6 and 7 provide additional protections, as will be described shortly.

6. The obligations expounded in the Convention are based on widespread international agreement that racial discrimination violates basic human rights, including those rights set out in the Universal Declaration of Human Rights. Compromising these freedoms undermines the “dignity and equality inherent in all human beings” that underlies the United Nations Charter and human rights law, including the Convention⁶⁶. Indeed, this Court has recognized the protection

⁶¹CERD, Preamble; judges’ folder, tab 1.

⁶² Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary*, 1 (2016).

⁶³ CERD, Art. 1 (1); judges’ folder, tab 1.

⁶⁴ *Ibid.* See also *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, declaration of Judge Crawford, p. 3, para. 7.

⁶⁵ CERD, Art. 2; see also Art. 2 (1) (a) (“Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation”); judges’ folder, tab 1.

⁶⁶ United Nations General Assembly, *Universal Declaration of Human Rights*, 10 Dec. 1948, 217 A (III), Preamble.

against racial discrimination as an obligation *erga omnes*, which “in view of its importance”, is the “concern of all States”, and thus all States can be held to have a legal interest in its protection⁶⁷.

7. Before addressing the plausibility of rights asserted by Qatar under the Convention, it bears reminding the Court of how Qatar got here. We do not intend to address comprehensively the merits of the case, nor ask that the Court ~~to~~ enter into the merits beyond what is strictly necessary for the purpose of Qatar’s request for provisional measures. We provide this background to demonstrate that the rights invoked by Qatar are plausible and why a temporary order of protection of Qataris is urgently needed, so that the rights protected under the Convention do not suffer further irreparable harm while these proceedings are pending.

8. As Dr. Al-Khulaifi explained this morning, on 5 June 2017, the UAE did more than just sever all diplomatic ties with the State of Qatar; it also enacted a broad series of measures directly and expressly targeting Qataris. In fact, as you can see from tab 6 in your folder, the Ministry of Foreign Affairs of the UAE issued a statement announcing that the “United Arab Emirates severs all relations with the State of Qatar, including breaking off diplomatic relations, and gives Qatari diplomats 48 hours to leave the UAE”. The announcement went on to state that the UAE had decided to “prevent[] Qatari nationals from entering the UAE or crossing its points of entry”, gave “Qatari residents and visitors in the UAE 14 days to leave the country”, and stated further that “UAE nationals are likewise banned from traveling to or staying in Qatar or transiting through its territories”.

9. The UAE also ordered the closure of its “airspace and seaports for all Qataris in 24 hours”. Just a few days later, on 11 June 2017, the UAE Federal Transport Authority issued a circular imposing transport restrictions on Qatari ships. As you can see at tab 8 in your folder, this circular could not be more explicit about targeting Qataris, in that it ordered all UAE ports not “to receive any Qatari flag vessel” or vessel owned by “Qatari individuals,” and not to load or unload “any cargo of Qatari origin in any port or water of the UAE”⁶⁸.

⁶⁷ *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Second Phase, Judgment, *I.C.J. Reports 1970*, p. 32, paras. 33-34.

⁶⁸ UAE Federal Transport Authority Circular No. 2/2/1023, *Implementation Process of the Decision Related to Qatar Sanctions*, dated 11 June 2017; Ann. 4; judges’ folder, tab 8.

10. The UAE ordered these measures suddenly and collectively without regard to the impact on any individuals and their rights. Amnesty International reported that “[w]ithin 24 hours, flights were suspended indefinitely and borders closed as the dispute escalated into a crisis, taking a serious toll on the lives of many people living in those countries”⁶⁹.

11. By that time, the UAE had also blocked access to news websites operated by Qatari entities, including Al Jazeera. Shortly after 5 June 2017, the UAE escalated these restrictions on freedom of expression, by blocking the transmission of additional Qatari stations and websites, including those owned by beIN Media. As reflected in tab 7 of your folder, on 7 June 2017, the Attorney General of the UAE proclaimed that it was a “crime” to express “sympathy, bias, or affection for [Qatar], or [to] object[] to the position of the [UAE] and the strict and firm measures it has taken against the Qatari government, whether through social media with tweets or posts, or any other verbal or written method” under the UAE’s Federal Decree on Combating Cybercrimes⁷⁰. According to the Attorney General, such crime is punishable by civil and criminal sanctions including up to 15 years of imprisonment. Amnesty International again condemned such conduct as “unthinkable” in that it “so blatantly infringe[s] on the right to freedom of expression”⁷¹.

12. The policy and practice of racial discrimination undertaken by the UAE are extraordinary, in the sense that the actions taken by the UAE are express, direct, and in the words of the Convention, have “the purpose” of nullifying and impairing protected rights based on national origin. This is not a circumstance that is limited to whether racially neutral laws or actions have an impermissible discriminatory effect. While the UAE’s actions indeed have discriminatory effect, no inference is necessary as to their unlawful purpose. By their own words, the UAE is violating its obligations by enacting and enforcing measures that *purposefully* target and infringe the rights of Qataris protected under the Convention *on the basis of their national origin*.

⁶⁹ Amnesty International, *One Year since the Gulf Crisis, Families are Left Facing an Uncertain Future*, 5 June 2018, <https://www.amnesty.org/en/latest/campaigns/2018/06/one-year-since-gulf-crisis-qatar-bahrain/>.

⁷⁰ Attorney General Warns Against Sympathy for Qatar or Objecting to the State’s Positions, AL BAYAN ONLINE, 7 June 2017; Ann. 3; Federal Decree Law No. (5) of 2012, Issued on 25 Ramadan 1453 AH, Corresponding to 13 Aug. 2012 AD, ON COMBATING CYBERCRIMES, Ann. 1; judges’ folder, tab 7.

⁷¹ Amnesty International, *Gulf/Qatar Dispute: Human Dignity Trampled and Families Facing Uncertainty as Sinister Deadline Passes*, 19 June 2017, p. 3; Ann. 6.

13. In short, the UAE's measures plainly violate the fundamental principle of respect for the equality and dignity inherent in all human beings that underlies the Convention, as well as numerous specific Convention obligations.

B. The rights claimed by Qatar are plausible

14. Mr. President, distinguished Members of the Court, I will now discuss the plausibility of the rights asserted in Qatar's Application and how the UAE's actions implicate these rights.

15. As this Court has recognized, including in the specific context of the Convention, the indication of provisional measures does not require an applicant "to establish the existence of breaches of [the] CERD," or to "make definitive findings" of fact⁷². Rather, Qatar must demonstrate that it is at least plausible that "the acts complained of constitute acts of racial discrimination under the Convention"⁷³. It is therefore sufficient that the rights asserted be "grounded in a possible interpretation" of the treaty invoked⁷⁴.

16. Qatar's claims under the Convention easily meet this standard. Qatar asserts that the UAE is violating the Convention's prohibition on collective expulsion and impermissibly is interfering with Qataris' basic human rights under Articles 2 and 5, is inciting and failing to condemn racial hatred and prejudice under Articles 4 and 7, and is denying effective protection and remedies against acts of racial discrimination under Article 6.

17. It bears emphasizing at the outset that a number of independent human rights bodies and organizations have documented the UAE's discriminatory actions against Qataris. For example, shortly after the UAE's imposition of the measures as you have heard, the United Nations High Commissioner for Human Rights stated he was "alarmed" by the possible human rights impact of the measures, noting "[i]t is becoming clear that the measures being adopted are overly broad in scope and implementation, and have the potential to seriously disrupt the lives of

⁷² *Georgia v. Russian Federation, Provisional Measures, Order of 15 October 2008*, p. 396, para. 141.

⁷³ *Ukraine v. Russian Federation, Provisional Measures, Order of 19 April 2017*, paras. 71, 78, 81-82 ("The Court observes that there is a correlation between respect for individual rights, the obligations of States parties under CERD and the right of States parties to seek compliance therewith.")

⁷⁴ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Provisional Measures, Order of 28 May 2009, I.C.J. Reports 2009*, p. 152, para. 60. (For the purposes of provisional measures, "the Court does not need to establish definitively the existence of the rights claimed" or consider the applicant's "capacity to assert such rights before the Court".)

thousands of women, children and men, simply because they belong to one of the nationalities involved in the dispute”⁷⁵. The High Commissioner also stated he was “extremely troubled” to hear that the UAE was “threatening to jail and fine people who express sympathy for Qatar or opposition to their own governments’ actions, as this would be a clear violation of the right to freedom of expression or opinion”⁷⁶. As you have heard, the Office of the High Commissioner ultimately despatched a Technical Mission to Qatar, with the specific mandate to assess the impact of the actions taken by the UAE and other States on human rights. The Technical Mission spent a total of eight days — from 17 November to 24 November 2017 — in Qatar, meeting with representatives of numerous government agencies, the Qatari National Human Rights Committee, civil society, the media, and other actors. The Technical Mission interviewed about 40 individuals and reviewed documents and data provided by various entities.

18. In December 2017, the Technical Mission issued a report, which is at tab 9 in your folder, concluding that the measures, “consisting of severe restrictions of movement, termination and disruption of trade, financial and investment flows, as well as the suspension of social and cultural exchanges imposed on the State of Qatar, have a potentially durable effect on the enjoyment of the human rights and fundamental freedoms of those affected”⁷⁷. The Report characterized the measures enacted by the UAE (and other States) as “discriminatory” because they expressly “target[] individuals on the basis of their Qatari nationality or their links to Qatar”⁷⁸. Equally, in August 2017, the six United Nations Special Rapporteurs, including the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, expressed “serious concerns” regarding “the numerous rights being infringed”, including the rights to “family reunification, education, work, freedom of expression, health”, and the “right to private property, without discrimination on any basis”⁷⁹. We have included in the

⁷⁵ Office of the United Nations High Commissioner for Human Rights, *Qatar diplomatic crisis: Comment by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein on impact on human rights*, 14 June 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21739&LangID=E>.

⁷⁶ *Ibid.*

⁷⁷ Office of the United Nations High Commissioner for Human Rights’ Technical Mission to the State of Qatar, 17-24 Nov. 2017; judges’ folder, tab 9, *Report on the Impact of the Gulf Crisis on Human Rights*, Dec. 2017, paras. 1-6; Ann. 16.

⁷⁸ *Ibid.* paras. 60, 64.

⁷⁹ Joint Communication from the Special Procedures Mandate Holders of the Human Rights Council to the United Arab Emirates, 18 Aug. 2017, p. 3; Ann. 11.

Annexes to the Application the findings from other independent human rights organizations, such as Amnesty International, Human Rights Watch, and Qatar’s National Human Rights Committee, or NHRC, which came to similar conclusions.

19. Mr. President and honourable Members of the Court, I will now turn to addressing the rights under Articles 2 and 5 in more detail. I do so by citing to this fulsome record of independent findings, which is more than enough to confirm the plausibility of *the* rights under the Convention.

1. Prohibition on collective expulsion

20. The Convention prohibits the collective expulsion of non-citizens as a form of racial discrimination. This prohibition flows from Article 5 of the Convention, which requires States parties to guarantee the equal enjoyment of basic human rights to all, regardless of race or national origin, in order for States to effectuate their Article 2 obligations to eliminate racial discrimination.

21. The CERD Committee repeatedly has observed that this fundamental obligation, as manifest in Articles 2 and 5, requires parties to the Convention, to quote its General Recommendation No. 30, to “[e]nsure that non-citizens are not subject to collective expulsion, in particular in situations where there are insufficient guarantees that the personal circumstance of each of the persons concerned have been taken into account”⁸⁰. Observing that xenophobia against non-nationals is one of the main sources of contemporary racism, the Committee also stated that States parties should “[e]nsure that immigration policies do not have the effect of discriminating against persons on the basis of . . . national or ethnic origin”⁸¹ and should provide “equal access to effective remedies, including the right to challenge expulsion orders”⁸².

22. Further, Article 1 (2) of the Convention, which provides that “[t]his Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens”, does not give States parties discretion to discriminate between different groups of non-citizens. As the Committee makes clear, discretion under Article 1 (2) “should not be interpreted to detract in any way from the rights and freedoms

⁸⁰ Committee on the Elimination of Racial Discrimination, *General Recommendation XXX on Discrimination Against Non-Citizens*, UN doc. CERD/C/64/Misc.11/rev.3 (2004), para. 26; judges’ folder, tab 4.

⁸¹ *Ibid.*, para. 9.

⁸² *Ibid.*, para. 25.

recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights”⁸³. This includes many of the rights and freedoms encompassed in Article 5 of the Convention, which by their very nature are human rights to be enjoyed by all persons, whether citizens or non-citizens, *again I quote:*

“[a]lthough some of these rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens, human rights are, in principle, to be enjoyed by all persons. States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognized under international law.”⁸⁴

23. The collective expulsion of a particular group of non-citizens thus strikes at the core of the prohibition against racial discrimination. It not only self-evidently has the impermissible purpose of prejudicing an entire group of people on the basis of national origin, but its effects also reverberate across a host of other protected rights, including due process guarantees and other civil, economic, and social rights protected from discriminatory interference by Article 5 of the Convention. The International Law Commission has codified the prohibition on collective expulsion as a principle of customary international law in its Draft Articles on the Expulsion of Aliens, noting that the prohibition is “expressly embodied” in numerous human rights treaties including the American Convention on Human Rights, the European Convention on Human Rights, and the African Charter on Human and Peoples’ Rights⁸⁵.

24. Mr. President, honourable Members of the Court, as I have described, the measures imposed by the UAE on 5 June 2017 and thereafter, make clear their purpose: racial discrimination based on national origin. The UAE’s own words demonstrate that there can be no dispute on this fundamental point. These measures apply by their terms en masse to *all* Qataris, but not to other groups of non-citizens subject to the UAE’s jurisdiction. They were imposed across the board against Qataris with no criteria other than national origin. There continues to be no transparent mechanism with established criteria to contest the expulsion, and no possibility of an impartial

⁸³ *Ibid.*, para. 2; see also Committee on the Elimination of Racial Discrimination, *General Recommendation XX on Article 5 of the Convention*, UN doc. A/51/18 (1996); judges’ folder, tab 3.

⁸⁴ Committee on the Elimination of Racial Discrimination, *General Recommendation XXX on Discrimination Against Non-Citizens*, UN doc. CERD/C/64/Misc.11/rev.3 (2004), para. 3; judges’ folder, tab 4.

⁸⁵ Draft Article of the International Law Commission on the *Expulsion of Aliens*, *Yearbook of the International Law Commission*, 2011, Vol. II, Part Two, p. 14.

hearing for those impacted, much less one affording basic due process. As the joint communication of the six United Nations Special Rapporteurs has expressed, “given the harm this order has on thousands of Qatari residents in the United Arab Emirates and Emirati residents in the State of Qatar”, the situation is one of “extreme gravity”⁸⁶. It is clear that the protection against collective expulsion under the Convention exists as a matter of law, and this record of proof is more than sufficient to confirm the plausibility of this right as asserted in Qatar’s Application.

25. This past Monday, we received a set of documents that the UAE has submitted in these proceedings. We will deal with these more fully at the appropriate time in rebuttal. But it is worth noting that this collection of materials consists of largely self-serving statements from UAE government officials, presented mostly in redacted form and selectively chosen to paint an apparent happy picture of Qataris freely moving and living between Qatar and the UAE since June 2017. To take one example, Exhibit 2 refers to a “hotline” established on 11 June 2017 based on a one-line “directive” to consider allowing families to reunite based on “humanitarian considerations”, after being brutally ripped apart. As an initial matter, a set of materials drafted and compiled by the Government cannot, by definition, refute the showing that Qatar has made and continues to make today on the basis of comprehensive, contemporaneous investigations — undertaken without regard to these proceedings — by highly credible third parties who include the Office of the United Nations High Commissioner for Human Rights, Amnesty International, Human Rights Watch and the NHRC. These third parties have all confirmed that the discriminatory measures are still being applied against Qataris. For one example, on 14 June 2017, three days after the UAE purports to have issued its “directive”, the High Commissioner for Human Rights stated that such “directives” implemented “to address the humanitarian needs of families with joint nationalities . . . are not sufficiently effective to address all cases”⁸⁷. At the very least, the materials submitted this past Monday present a misleading picture of the situation on the ground; at most, the UAE is previewing factual disputes to be

⁸⁶ Joint Communication from the Special Procedures Mandate Holders of the Human Rights Council to the United Arab Emirates, 18 Aug. 2017, pp. 1-2, Ann. 11.

⁸⁷ OHCHR, *Qatar diplomatic crisis: Comment by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein on impact on human rights*, 14 June 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21739&LangID=E>.

considered by the Court at later stages of these proceedings, not for purposes of assessing the plausibility of rights asserted under the Convention. As I have said, we will expand on this in the rebuttal, after hearing the UAE's claims.

2. Discriminatory interference with enjoyment of basic human rights

26. I now turn to Article 5 of the Convention, which requires State parties to “undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to . . . national or ethnic origin, to equality before the law, notably in the enjoyment” of basic human rights⁸⁸.

27. As described in Qatar's Application, the discriminatory measures enacted by the UAE impermissibly interfere with Qataris' rights under Article 5 to enjoy, without discrimination, at least six rights: (1) the right to marriage and choice of spouse; (2) the right to freedom of opinion and expression; (3) the right to public health and medical care; (4) the right to education and training; (5) the rights to work and own property; and (6) the right to equal treatment before tribunals and other organs administering justice. I note that the rights under Article 5 are non-exhaustive⁸⁹, and other rights, such as the rights of the child and the right to a family life, are also impacted by the UAE's actions.

28. I will address briefly each of these rights in turn.

29. *First*, Qatar asserts that the UAE is violating the right to marriage and choice of spouse under Article 5 (d) (iv) of the Convention, as well as the right to a family life and rights of the child under the Universal Declaration of Human Rights and other human rights instruments⁹⁰. By its collective expulsion of Qataris, recall from Qatar of Emiratis, and ban on entry of Qataris to the UAE, the UAE has separated families of Qatari-Emirati national origin. The UAE essentially is

⁸⁸ CERD, Art. 5; judges' folder, tab 1.

⁸⁹ *Ibid.*, “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to . . . national . . . origin . . . to equality before the law, notably in the enjoyment of . . . political rights . . . other civil rights . . . and economic, social and cultural rights”, including those rights specified in the Article “in particular”. See also Committee on the Elimination of Racial Discrimination, *General Recommendation XX on Article 5 of the Convention*, UN Doc. A/51/18 (1996), para. 1; judges' folder, tab 3.

⁹⁰ See, e.g., UN General Assembly, *Universal Declaration of Human Rights*, 10 Dec. 1948, 217 A (III), Arts. 12, 16; Committee on the Elimination of Racial Discrimination, *General Recommendation XXX on Discrimination Against Non-Citizens*, UN doc. CERD/C/64/Misc.11/rev.3 (2004), para. 28 (States must not expel non-citizens when doing so “would result in disproportionate interference with the right to family life”), judges' folder, tab 4; Convention on the Rights of the Child, GA res. 44/25 (1989), Art. 9; International Covenant on Civil and Political Rights, GA res. 2200A (XXI) (1996), Arts. 17, 23; judges' folder, tab 4.

punishing Qataris who have chosen to marry Emiratis and vice versa, an impermissible discriminatory interference with these basic human rights.

30. There are over 3,600 recorded marriages between Qataris and Emiratis whose rights have been infringed and continue to be infringed by these measures⁹¹. The impact of forced separation is felt by Qataris in these marriages and ripple outward to implicate their rights to a family life and the rights of children. For example, the NHRC's Third Report describes on page 5 the situation of Ms S. A., a Qatari who had moved to the UAE years ago, after marrying an Emirati man. Although they subsequently divorced, she built a life in the UAE in order to remain with her four Emirati children. She was traveling outside the UAE on 5 June 2017. The UAE's travel ban on Qataris barred her from returning to her home in the UAE, indefinitely separating her from her four children, who are also prohibited from living with her in Qatar⁹². For another example, "Ahmed" is a Qatari who is married to an Emirati. The couple lived together in the UAE, but last 5 June, Ahmed was given 14 days to leave his home and family and was expelled from the UAE, *just* because he is Qatari⁹³.

31. These are but two examples. In early June 2018, Qatar's NHRC had documented 82 accounts of such separation, as reflected in the NHRC Fifth Report⁹⁴. Of course, this is a gross underestimate of the Qataris affected, since the NHRC has relied on the self-reporting of families, and many families are reluctant to come forward for fear of reprisals against family members remaining in the UAE. According to a report from Amnesty International from just this month, June 2018, "a year on, the situation has not improved. Residents of the region are still left facing uncertain futures: . . . families are still waiting to be reunited"⁹⁵.

32. *Second*, Qatar asserts that the UAE is also violating the right to freedom of opinion and expression under Article 5 (d) (viii) of the Convention.

⁹¹ Joint Communication from the Special Procedures Mandate Holders of the Human Rights Council to the United Arab Emirates, 18 Aug. 2017, pp. 1-2, Ann. 11.

⁹² National Human Rights Committee, *100 Days Under the Blockade, Third Report on Human Rights Violations Caused by the Blockade Imposed on the State of Qatar*, 30 Aug. 2017, p. 5, Ann. 12.

⁹³ Human Rights Watch, *Qatar: Isolation Causing Rights Abuses*, 12 July 2017, p. 5, Ann. 10.

⁹⁴ National Human Rights Committee, *Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar*, June 2018, p. 14, Ann. 22.

⁹⁵ Amnesty International, *One Year since the Gulf Crisis, Families are Left Facing an Uncertain Future*, 5 June 2018, <https://www.amnesty.org/en/latest/campaigns/2018/06/one-year-since-gulf-crisis-qatar-bahrain/>.

33. After 5 June 2017, the UAE immediately moved to curtail free expression from and regarding Qatar and violating the freedom of expression enjoyed by Qataris and Qatari entities, including by taking the steps I mentioned earlier: the closure of Qatari media outlets, the blocking of access to Qatari news broadcasts, and the enforcement of civil and criminal sanctions, including imprisonment, for any expression of “sympathy” toward Qatar, in any form. These actions also inevitably have created a climate of fear for any link to Qatar or Qataris for individuals in the UAE, compounding the violation of the rights of Qataris attempting to access family, property, or any form of legal recourse⁹⁶.

34. *Third*, Qatar asserts that the UAE’s actions are also infringing upon the right to public health and medical care under Article 5 (e) (iv) of the Convention.

35. By its ban on entry to the UAE and its collective expulsion of Qataris, as well as its restrictions on trade with Qatar, the UAE interrupted the medical treatment of those Qataris who previously resided in the UAE or travelled there for treatment, and is denying to Qataris the opportunity to travel to the UAE for required medical care⁹⁷.

36. The trade restrictions imposed by the UAE on 5 June 2017 also immediately cut off every resident of Qatar from the supply of medicines originating in the UAE. The situation was particularly dire, given that Qatar previously sourced 50-60 per cent of its pharmaceutical stock from suppliers based in the UAE⁹⁸. While the Qatar Ministry of Health reports that most of these medications are now being imported from other countries, the impact continues to be felt by many, and certain medications remain unavailable⁹⁹. According to the OHCHR report, “[t]he considerable restrictions on movement of people and goods had an immediate impact on various human rights. Some had a punctual effect but most have had continuing implications to date”¹⁰⁰.

⁹⁶ See Amnesty International, *Gulf dispute: Six months on, individuals still bear brunt of political crisis*, 14 Dec. 2017, <https://www.amnesty.org/en/documents/mde22/7604/2017/en/>.

⁹⁷ NHRC, *Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar*, June 2018, p. 51, AQ, Ann. 22.

⁹⁸ OHCHR Technical Mission to the State of Qatar, 17-24 Nov. 2017, *Report on the Impact of the Gulf Crisis on Human Rights*, Dec. 2017, para. 47, AQ, Ann. 16; judges’ folder, tab 9.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.* para. 26.

37. *Fourth*, Qatar asserts that the UAE is violating the right to education and training under Article 5 (e) (v) of the Convention.

38. By expelling Qataris from the UAE and prohibiting Qatari travel to the UAE, the UAE is barring Qataris who previously studied in the country from continuing their education there. As of early June 2018, the NHRC reported 148 complaints brought by Qatari students who previously studied in the UAE¹⁰¹.

39. For example, the NHRC First Report describes the situation of Ms K. W., a Qatari who previously studied at Zayed University in Dubai¹⁰². Ms K. W. stated that on 10 June 2017, during her last year of study, the university informed her that she had been banned from continuing her studies due to the “recent political developments.” For these students, the ability to continue their studies outside of the UAE is not guaranteed: the Ministry of Education of Qatar has reported that many students who were enrolled in universities in the UAE have been unable to obtain their transcripts, which has made it difficult, if not impossible, to transfer to new institutions because they cannot provide sufficient evidence of their previous studies¹⁰³.

40. *Fifth*, Qatar asserts that the UAE is interfering with the Qataris’ rights to work and own property under Articles 5 (e) (i) and 5 (d) (v) of the Convention.

41. Through its collective expulsion and ban on entry of Qataris, the UAE is preventing Qataris working in the UAE from continuing their employment. As of early June 2018, the NHRC reported 458 complaints brought by individual property owners as a result of the UAE’s measures¹⁰⁴. To take just one example, the NHRC Fifth Report also describes the case of Mr. H. A., a Qatari previously resident in the UAE, who reported that after 5 June 2017 he was forced to abandon his livelihood in the country he had lived in for thirty years¹⁰⁵.

¹⁰¹ NHRC, *Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar*, June 2018, p. 18, AQ, Ann. 22.

¹⁰² NHRC, *First Report Regarding the Human Rights Violations as a Result of the Blockade on the State of Qatar*, 13 June 2017, p. 10, Ann. 5.

¹⁰³ OHCHR Technical Mission to the State of Qatar, 17-24 Nov. 2017, *Report on the Impact of the Gulf Crisis on Human Rights*, Dec. 2017, para. 52, AQ, Ann. 16; judges’ folder, tab 9.

¹⁰⁴ NHRC, *Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar*, June 2018, p. 24, AQ, Ann. 22.

¹⁰⁵ NHRC, *100 Days Under the Blockade, Third Report on Human Rights Violations Caused by the Blockade Imposed on the State of Qatar*, 30 Aug. 2017, p. 7, Ann. 12.

42. Qataris also are being deprived of the use and value of their properties in the UAE. Qataris own a vast amount of property in the UAE. They purchased approximately USD 500 million worth of property in Dubai in 2016 alone¹⁰⁶. With the ban in place, these Qatari owners have no means of ascertaining the status of their property or reaping any rental income to which they may be entitled¹⁰⁷. In effect, the UAE's measures are depriving Qataris of all ownership rights — they can neither use the property nor sell it, because they would need to engage a non-Qatari to sell the property on their behalf, but, due to the ban, Qataris cannot enter into the power of attorney needed to do so. Powers of attorney must be authenticated by a UAE embassy, but the Emirati embassy in Qatar is closed, the UAE embassies in other jurisdictions reportedly are refusing to authenticate such documents for Qataris, and previously existing powers of attorney are not reliably recognized¹⁰⁸.

43. *Finally*, Qatar asserts that the UAE is interfering with the right to equal treatment before tribunals and all other organs administering justice, which is guaranteed under Article 5 (a) of the Convention.

44. The ban on entry to the UAE, combined with the UAE's criminalization of expressions of sympathy toward Qatar, are depriving Qataris of the opportunity to retain counsel and appear before local courts. The anti-“sympathy” measures also pose a bar to attempts to engage counsel from outside the country, since legal assistance could be interpreted as an illegal expression of sympathy and subject attorneys to criminal liability¹⁰⁹. Even were a Qatari able to surpass these obstacles, the inability to physically appear in any proceeding, for example as a witness, likewise impairs the right to equal treatment before tribunals, creating a disadvantage for Qatari litigants that does not exist for a litigant of any other national origin. For example, two Qatari brothers, Mr. B. Th. and Mr. A. M., inherited property and other assets located in the UAE from their late father. Their rights, however, six months after the measures were imposed, had yet to be resolved

¹⁰⁶ *The boycott of Qatar is hurting its enforcers*, THE ECONOMIST (19 Oct. 2017), <https://www.economist.com/middle-east-and-africa/2017/10/19/the-boycott-of-qatar-is-hurting-its-enforcers>.

¹⁰⁷ NHRC, *100 Days Under the Blockade, Third Report on Human Rights Violations Caused by the Blockade Imposed on the State of Qatar*, 30 Aug. 2017, p. 10, Ann. 12.

¹⁰⁸ OHCHR Technical Mission to the State of Qatar, 17-24 Nov. 2017, *Report on the Impact of the Gulf Crisis on Human Rights*, Dec. 2017, para. 40, AQ, Ann. 16; judges' folder, table 9.

¹⁰⁹ *Ibid.*

in probate, depriving them of the value, title and access to rental properties, and the lease revenues to which they are entitled¹¹⁰.

45. In sum, Mr. President and honourable Members of the Court, there is more than enough support to confirm the plausibility of the rights asserted under Articles 2 and 5 of the Convention.

46. With that, Mr. President, I ask you to invite Professor Klein to the podium to address Articles 4 and 7 and Article 6, as well as how the provisional measures requested by Qatar relate to the rights asserted in the Application, perhaps after the coffee break. Thank you Mr. President.

The PRESIDENT: I thank Ms Amirfar. Before I invite the next speaker to take the floor, the Court will observe a coffee break of 15 minutes. The hearing is suspended.

The Court adjourned at 11.35 a.m.

The PRESIDENT: Please be seated. The sitting is resumed. I will now give the floor to Professor Klein. You have the floor.

M. KLEIN : Merci, Monsieur le président.

**IV. LES DROITS DONT LA PROTECTION EST RECHERCHÉE PAR QATAR SONT PLAUSIBLES
AU REGARD DES ARTICLES 4, 6, ET 7 DE LA CONVENTION ET PRÉSENTENT
UN LIEN DIRECT AVEC LES MESURES CONSERVATOIRES SOLLICITÉES**

1. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, c'est un honneur pour moi d'intervenir dans la présente instance au nom de l'Etat du Qatar. Vous venez de l'entendre, les droits dont la protection est recherchée par Qatar dans la présente instance sont manifestement plausibles au regard des articles 2 et 5 de la convention sur l'élimination de toutes les formes de discrimination raciale. Je voudrais vous montrer maintenant qu'ils le sont tout autant au regard des articles 4, 7 et 6 de la convention, qui traitent respectivement de la lutte contre l'incitation à la discrimination raciale et contre les préjugés et de l'accès à des voies de recours effectives contre les actes de discrimination raciale. Je montrerai également, en conclusion de ma brève intervention de ce matin, que l'ensemble des mesures conservatoires sollicitées par Qatar

¹¹⁰ NHRC, *6 Months of Violations, What Happens Now? The Fourth General Report on the Violations of Human Rights Arising from the Blockade of the State of Qatar*, 5 Dec. 2017, p. 19, AQ, Ann. 17.

présentent un lien direct avec les droits dont la protection est sollicitée dans le cadre de la présente instance.

A. L'incitation à la haine raciale et aux préjugés

2. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, les autorités des Emirats arabes unis ont rapidement accompagné les mesures qu'elles ont édictées à l'encontre des Qataris d'une campagne de propagande dirigée contre Qatar et les Qataris. Le rapport de la mission technique menée au Qatar par le Haut-Commissariat des Nations Unies aux droits de l'homme en novembre 2017 fait état à cet égard d'une campagne «de haine et de diffamation» dans les quatre Etats qui ont adopté des mesures à l'encontre de Qatar et des Qataris, campagne appuyée sur des centaines d'articles de presse et de caricatures allant parfois jusqu'à l'appel au meurtre de Qataris¹¹¹. Ces discours de haine ont, à certaines occasions, été relayés par de hauts responsables émiratis. En novembre 2017, par exemple, l'ancien chef de la police de Doubaï, devenu responsable de la sécurité dans cet Emirat, a accusé à tort la chaîne Al-Jazeera d'avoir provoqué une attaque en Egypte et a appelé à la bombarder¹¹². Et je vous rappelle que, très rapidement également, les Emirats arabes unis ont érigé en infraction pénale, punissable de lourdes peines, le fait d'exprimer de la sympathie ou de l'affection pour Qatar¹¹³, ce qui a évidemment contribué au climat d'hostilité générale envers Qatar et les Qataris.

3. Toutes ces pratiques vont clairement à l'encontre des dispositions de la convention, qui met un accent tout particulier sur la lutte contre la propagation de discours de haine raciale et

¹¹¹ Onglet n° 9, Office of the United Nations High Commissioner for Human Rights' Technical Mission to the State of Qatar, 17-24 November 2017, «Report on the Impact of the Gulf Crisis on Human Rights», December 2017 [Mission technique du Bureau du Haut-Commissaire des Nations Unies aux droits de l'homme à l'Etat du Qatar, 17-24 novembre 2017, Rapport sur l'impact de la crise du Golfe sur les droits de l'homme, décembre 2017], par. 15-16, annexe 16.

¹¹² Requête, note de bas de page 69, Dhahi Khalfan (@Dhahi_Khalfan), *Twitter*, 24 novembre 2017, https://twitter.com/Dhahi_Khalfan/status/934069452261425152 (traduction non officielle : «L'alliance devrait bombarder la machine de propagande terroriste. Le canal de l'EI, d'Al Qaeda et d'Al Nusra, la *Jazeera* du terrorisme.») ; «U.A.E. security official blames TV for Egypt attack, encourages bombing Al Jazeera» [Un responsable de la sécurité des Emirats arabes unis rejette la responsabilité de l'attaque en Egypte sur la télévision, encourage le bombardement d'Al Jazeera], *Think Progress*, 25 novembre 2017, <https://thinkprogress.org/u-a-e-security-official-blames-tv-for-egypt-attack-encourages-bombing-al-jazeera-8f4f6b8cf254/>.

¹¹³ Onglet n° 7, «Attorney General Warns Against Sympathy for Qatar [f]or Objecting to the State's Positions» [Le procureur général met en garde contre la sympathie envers Qatar [p]our les objections aux positions de l'Etat], *Al Bayan Online*, 7 juin 2017, annexe 3.

contre les préjugés raciaux¹¹⁴. L'article 4 de la convention consigne ainsi l'engagement des Etats parties à «ne pas permettre aux autorités publiques ni aux institutions publiques, nationales ou locales, d'inciter à la discrimination raciale ou de l'encourager» (~~article 4 e~~). Dans sa recommandation générale n° 35 sur la lutte contre les discours de haine raciale, le Comité pour l'élimination de la discrimination raciale a jugé «particulièrement préoccupantes les expressions de racisme émanant de telles autorités ou institutions, notamment les déclarations prêtées à de hauts responsables»¹¹⁵. Aux termes de l'article 4 de la convention, les Etats parties sont également tenus de condamner toute propagande qui prétend «justifier ou encourager toute forme de haine et de discrimination raciales», et ce, quelle que soit l'origine de cette propagande.

4. Les pratiques auxquelles je viens de faire référence mettent aussi les Emirats arabes unis en porte-à-faux par rapport aux obligations qui découlent de l'article 7 de la convention. Aux termes de cette disposition,

«[I]es Etats parties s'engagent à prendre des mesures immédiates et efficaces, notamment dans les domaines de l'enseignement, de l'éducation, de la culture et de l'information, pour lutter contre les préjugés conduisant à la discrimination raciale et favoriser la compréhension, la tolérance et l'amitié entre nations et groupes raciaux ou ethniques...»

5. En écho à cette disposition, le Comité pour l'élimination de la discrimination raciale, dans sa recommandation générale n° 30 concernant la discrimination contre les non-ressortissants, a spécifiquement recommandé aux Etats parties de

«[p]rendre des mesures énergiques pour combattre toute tendance à viser, stigmatiser, stéréotyper ou caractériser par leur profil les membres de groupes de population «non-ressortissants» sur la base de la race, la couleur, l'ascendance et l'origine nationale ou ethnique, en particulier de la part des politiciens, des responsables, des éducateurs et des médias, sur Internet, dans d'autres réseaux de communication électroniques et dans la société en général»¹¹⁶.

6. C'est tout le contraire qui s'est passé aux Emirats arabes unis depuis un an maintenant. Loin de lutter contre les préjugés, de prévenir le développement des discours de haine ou de

¹¹⁴ Voir onglet n° 2, Comité pour l'élimination de la discrimination raciale, Recommandation générale XV sur l'article 4 de la convention (1993), par. 1 ; onglet n° 5, Comité pour l'élimination de la discrimination raciale, Recommandation générale n° 35 sur la lutte contre les discours de haine raciale, U.N. Doc. CERD/C/GC/35 (2013), par. 5 et 10.

¹¹⁵ Onglet n° 5, Comité pour l'élimination de la discrimination raciale, Recommandation générale n° 35 sur la lutte contre les discours de haine raciale, U.N. Doc. CERD/C/GC/35 (2013), par. 22.

¹¹⁶ Onglet n° 4, Comité pour l'élimination de la discrimination raciale, Recommandation générale n° XXX concernant la discrimination contre les non-ressortissants, 2005, par. 12.

combattre leur diffusion, les autorités émiraties les ont laissés prospérer, voire les ont encouragés de différentes manières — quand elles ne tenaient pas de tels discours elles-mêmes. Il ne fait donc aucun doute que les droits dont Qatar demande aujourd’hui la protection au titre des articles 4 et 7 de la convention sont à tout le moins plausibles.

B. L'impossibilité d'accéder à des voies de recours effectives

7. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, l’expulsion de l’ensemble des Qataris du territoire des Emirats arabes unis a entraîné pour ceux-ci une autre conséquence néfaste. Elle les a en effet très largement privés d’accès à des voies de recours effectives pour faire valoir leurs droits. Ma collègue Catherine Amirfar vient d’évoquer cette situation sous l’angle de l’article 5 de la convention et du droit à un traitement égal devant les tribunaux ; je ne m’y attarderai donc pas plus en ce qui concerne les faits.

8. Je relèverai seulement que cette situation est manifestement contraire aussi aux termes de l’article 6 de la convention, qui dispose dans un premier temps que

«[I]es Etats parties assureront à toute personne soumise à leur juridiction une protection et une voie de recours effectives, devant les tribunaux nationaux et autres organismes d’Etat compétents, contre tous actes de discrimination raciale qui, contrairement à la présente Convention, violeraient ses droits individuels et ses libertés fondamentales...»

9. En outre, pour les mêmes raisons que celles évoquées plus tôt par ma collègue, il s’avère particulièrement difficile, pour ne pas dire impossible, pour les Qataris d’avoir accès aux tribunaux des Emirats arabes unis pour défendre leurs droits dans les autres domaines où ils ont été affectés du fait des mesures discriminatoires qui les ont visés. Il en va ainsi, par exemple, pour les recours que les Qataris empêchés de poursuivre leurs études par les mesures appliquées à partir de juin 2017 voudraient tenter afin d’obtenir le remboursement de frais d’inscription versés à une institution d’enseignement émiratie. Il en va de même, pour prendre un autre exemple, pour les Qataris que les mêmes mesures ont empêchés d’avoir accès à leurs biens ou à leurs propriétés aux Emirats arabes unis et qui se trouvent souvent confrontés à d’importantes difficultés financières ou matérielles de ce fait. Mesdames et Messieurs les Membres de la Cour, Monsieur le président, vous observerez d’ailleurs, qu’à l’exception d’une seule procuration de portée tout à fait générale¹¹⁷,

¹¹⁷ Documents soumis par les Emirats arabes unis, document n° 6 («Power of Attorney»).

aucun des documents produits par les Emirats arabes unis en début de cette semaine ne vient contredire ce constat.

10. Ces obstacles mis à la possibilité d'agir en justice pour faire valoir les autres droits des Qataris affectés par les mesures discriminatoires en cause vont clairement à l'encontre du prescrit du second membre de l'article 6 de la convention, qui impose aux Etats parties d'assurer à toute personne soumise à leur juridiction «le droit de demander à ces tribunaux [nationaux] satisfaction ou réparation juste et adéquate pour tout dommage dont elle pourrait être victime par suite d'une telle discrimination». Que ce soit au regard de la première ou de la seconde partie de cette disposition, les droits dont Qatar cherche à assurer la protection en ce qui concerne l'accès de ses ressortissants à des voies de recours effectives sont donc eux aussi éminemment plausibles.

C. Les mesures conservatoires sollicitées par Qatar présentent un lien direct avec les droits dont la protection est recherchée

11. En plus de la plausibilité des droits dont la violation est alléguée, il est encore nécessaire d'établir qu'il existe un lien «entre les mesures sollicitées et les droits dont il est prétendu qu'ils sont exposés à un risque de préjudice irréparable»¹¹⁸. C'est bien le cas en l'espèce. Pour rappel, les mesures conservatoires sollicitées par Qatar portent de manière générale sur la cessation, par les Emirats arabes unis, de tout comportement qui impliquerait, de manière directe ou indirecte, n'importe quelle forme de discrimination raciale à l'encontre des Qataris. Cette demande globale recouvre un certain nombre de points particuliers qui comprennent :

- la suspension de l'expulsion des Qataris du territoire des Emirats arabes unis, de même que de l'interdiction d'y pénétrer sur la base de leur origine nationale¹¹⁹ ;
- l'adoption des mesures nécessaires pour s'assurer que les Qataris ne soient pas soumis à la haine ou à la discrimination raciale et pour mettre fin à la publication de déclarations et de caricatures hostiles à Qatar¹²⁰ ;

¹¹⁸ Voir *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie), mesures conservatoires, ordonnance du 19 avril 2017, C.I.J. Recueil 2017*, p. 135, par. 86.

¹¹⁹ Demande en indication de mesures conservatoires, par. 19 a) i).

¹²⁰ *Ibid.*, par. 19 a) ii).

- la suspension de l'application du décret-loi fédéral n° 5 de 2012 sur la lutte contre la cybercriminalité à toute personne qui «exprime de la sympathie envers Qatar»¹²¹ ;
- l'adoption des mesures nécessaires pour assurer la protection de la liberté d'expression des Qataris aux Emirats arabes unis, y compris en suspendant la fermeture des organes de presse qataris et le blocage de leurs transmissions¹²² ;
- la suspension de toute mesure qui a directement ou indirectement pour effet de séparer les familles dont l'un des membres est Qataris¹²³, d'empêcher les Qataris de recevoir des soins médicaux¹²⁴, une éducation ou une formation aux Emirats arabes unis¹²⁵, ou d'empêcher les Qataris d'avoir accès aux propriétés qu'ils possèdent aux Emirats arabes unis, d'en faire usage ou de les gérer¹²⁶ ;
- et enfin l'adoption de toutes les mesures nécessaires pour s'assurer que les Qataris jouissent d'un traitement égal devant les tribunaux et les autres organes judiciaires dans les Emirats arabes unis, en ce compris en établissant un mécanisme qui permette de contester les mesures discriminatoires¹²⁷.

12. L'ensemble de ces mesures présente clairement un lien direct avec les différents droits découlant de la convention internationale pour l'élimination de toutes les formes de discrimination raciale dont Mme Amirfar et moi-même venons de démontrer la plausibilité, que ce soit à l'égard de l'interdiction générale de la discrimination raciale, de la lutte contre la propagande haineuse ou de la jouissance des droits civils, politiques, sociaux, économiques ou culturels auxquels renvoie l'article 5 de la convention. Cette dernière exigence est donc elle aussi satisfaite.

13. La plausibilité de l'ensemble des droits dont Qatar sollicite la protection dans le cadre de la présente instance et leur relation directe avec les mesures conservatoires demandées ayant été **démontrées**, je voudrais vous demander, Monsieur le président, de bien vouloir passer la parole à

¹²¹ Demande en indication de mesures conservatoires, par. 19 a) iii).

¹²² *Ibid.*, par. 19 a) iv).

¹²³ *Ibid.*, par. 19 a) v).

¹²⁴ *Ibid.*, par. 19 a) vi).

¹²⁵ *Ibid.*, par. 19 a) vii).

¹²⁶ *Ibid.*, par. 19 a) viii).

¹²⁷ *Ibid.*, par. 19 a) ix).

Lord Goldsmith afin qu'il puisse montrer à la Cour que les dernières conditions requises pour l'indication de mesures conservatoires, à savoir l'urgence et le caractère irréparable du préjudice, sont bien remplies en l'espèce. Je vous remercie, Monsieur le président, Mesdames et Messieurs les Membres de la Cour, pour votre aimable attention.

Le PRESIDENT : Je remercie M. le professeur Klein et j'invite Lord Goldsmith à prendre la parole. Vous avez la parole.

Lord GOLDSMITH: Thank you, Mr. President.

V. THE PROVISIONAL MEASURES ARE URGENT: THERE IS A REAL AND IMMINENT RISK OF IRREPARABLE PREJUDICE TO THE RIGHTS IN DISPUTE

A. Introduction

1. Mr. President, Members of the Court. As my distinguished colleague, Dr. Al-Khulaifi, indicated, it falls to me to demonstrate that there is a real and imminent risk of irreparable prejudice to the rights in dispute. So that the Court can be satisfied that the provisional measures that Qatar seeks are indeed urgent.

2. The power to award provisional measures is a crucial one. It has, I suggest, a twofold purpose. Firstly, and critically, as my colleague Mr. Donovan explained, it allows the Court to preserve the rights in dispute and thus preserve the integrity of the proceedings before it. There is little comfort to a claimant, or indeed to the Court, if, by the time the Court comes to render its final decision, the passage of time means that the very interests that the proceedings were brought to protect have been irreversibly damaged. That leads to the second purpose of this power: to protect the value of this honourable Court's judicial functions more generally¹²⁸.

3. Now, this Court has repeatedly confirmed — including in its most recent measures order in *Jadhav* — that it will exercise the power to award provisional measures where there is “urgency,

¹²⁸ R. Kolb, *The International Court of Justice* (Hart Publishing, 2013), p. 616 (“The purpose of provisional measures is both to enable the Court to preserve the value of its judicial functions and to preserve the respective rights of the parties, pending the decision of the Court.”).

in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights in dispute before the Court gives its final decision”¹²⁹.

4. My colleagues have already set out the rights in dispute. We are talking about the rights of Qatar and Qataris under Articles 2, 4, 5, 6 and 7 of the Convention, to be free from racial discrimination as defined in Article 1 of the Convention, including in the enjoyment of fundamental rights and freedoms¹³⁰. We are also asking, of course, for orders as to the non-aggravation of the dispute. However, I need not spend time on this point, as this request is clearly linked to protection of the rights in dispute and the jurisprudence on this point is well-known to Members of the Court.

5. So in these remarks, which it is my honour to make on behalf of the State of Qatar, I want really to make three points.

6. *First*, I want to seek to explain that the evidence before this Court demonstrates that irreparable prejudice has been caused, and continues to be caused, to the rights in dispute. Given the nature of the rights in question and their flagrant violation over the course of a year and indefinitely into the future, it is difficult, I would suggest, to argue with this conclusion.

7. In this case, irreparable prejudice to the rights in dispute is inevitable: that prejudice is being realized as we speak. However, I want to emphasize, of course, that urgency is dependent only upon a showing of real and imminent *risk of irreparable damage*, irreparable prejudice — there is no need, for example, to prove probability (and certainly not inevitability) of harm. By way of example, in its provisional measures order in the recent case of *Jadhav*, the Court said this, “the mere fact that Mr. Jadhav is under such a sentence and *might* therefore be executed is sufficient to demonstrate the existence of such a risk”¹³¹.

¹²⁹ *Immunities and Criminal Proceedings, Order*, p. 1168, para. 82, cited in *Ukraine v. Russian Federation, Order*, paras. 88-89; *Jadhav Case, Provisional Measures, Order*, para. 50.

¹³⁰ See the definition of “rights in dispute” in the first provisional measures order issued by the Permanent Court of International Justice in *Denunciation of the Sino-Belgian Treaty of 2 November 1865, P.C.I.J., Series A, No. 8*, p. 6.

¹³¹ *Jadhav Case, Provisional Measures, Order*, para. 53; emphasis added; see also *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia), Provisional Measures, Order of 3 March 2014, I.C.J. Reports 2014*, pp. 157-158, para. 42 (“The Court is of the view that the right of Timor-Leste to conduct arbitral proceedings and negotiations without interference *could suffer* irreparable harm if Australia failed to immediately safeguard the confidentiality of the material seized by its agents on 3 December 2013 from the office of a legal advisor to the Government of Timor-Leste.”)

8. *Secondly*, I want respectfully to draw upon this Court's jurisprudence to show that this aligns with the findings of the Court in prior cases that implicate rights under this Convention, including many of the rights that Qatar invokes, as well as other human or individual rights. Irreparable prejudice is the natural consequence of violation of the rights before the Court in this case.

9. And *finally*, on the question of imminence, we say that is beyond doubt. The evidence shows that interference with these rights is ongoing: the rights are being undermined today, and will be undermined tomorrow, and the next day, and will continue in this way until Qatar capitulates to the demands of the UAE or this Court comes to the aid of suffering Qataris and issues provisional measures, as we respectfully request.

10. Mr. President, Members of the Court, there is no legitimate reason for the hardship and trauma that Qataris are living with. The United Arab Emirates is deliberately aiming to exert pressure on Qatar, including through its nationals, intended to force Qatar to change its internal and foreign policy. In those circumstances, it hardly lies in their mouths to deny that the measures that they have taken will cause hardship and pain to Qataris when their very purpose is to cause pain and hardship so that Qatar is forced to capitulate. As Qatar explains in its Application, and as the Court has already heard this morning, the UAE issued 13 *demands* on 23 June 2017, and lifting the diplomatic and trade embargo (including expulsion of Qataris and therefore respect for their rights) was expressly linked to Qatar's compliance with these demands¹³².

11. In the light of the United Arab Emirates' refusal to suspend or withdraw its illegal acts — as my colleague Mr. Donovan has shown — the people of Qatar could see an indefinite violation of their rights and the damage and distress that results. The UAE has had plenty of opportunity to withdraw, and to withdraw fully, the discriminatory measures but it plainly does not intend to do so. So Qatar has come before this honourable Court to bring an end to ~~*that potential*~~ *the* indefinite suffering of Qataris, and it respectfully seeks therefore an order that the UAE cease to flout its international obligations.

¹³² Qatar's Application, paras. 26-27.

B. The UAE's actions have caused, and are causing, irreparable prejudice to the rights in dispute

12. I turn to my first topic. The Court has considered harm to be irreparable where the violation “may not be capable of remedy, since it might not be possible to restore the *status quo ante*”¹³³. ~~On a~~ *One* matter of housekeeping, I do not intend to ask the Court at this stage to refer to any of the documents. All the citations are, of course, clearly stated in the written script available to Members of the Court.

13. As my colleagues have emphasized, the Court is not, at this stage of the proceedings, called upon to make any definitive findings of fact as regards the violation of rights under the Convention. At this stage, the Court is only assessing a risk of *future* harm based on the “circumstances drawn to its attention” and the evidence before it: future in the sense that the harm might occur *anytime* between now and this Court rendering a decision on the merits¹³⁴. Also relevant, we submit, to the “circumstances” under consideration is the flagrant nature of the violations. As the Commentary on the ICJ Statute states: “the Court’s case law . . . reveals that provisional measures are granted when an obvious and flagrant violation of rights cannot be tolerated until the delivery of the final judgment”¹³⁵.

14. This Court has confirmed that a risk of irreparable prejudice can be found by considering evidence that shows *prima facie* past restrictions on rights. So in the provisional measures proceedings in *Ukraine v. Russian Federation*, this Court, in assessing future harm, relied on reports from the United Nations Office of the High Commissioner for Human Rights (OHCHR) and from the Organization for Security and Co-operation (OSCE) in Europe. And it relied on ~~those~~ *these* reports that showed, *prima facie*, past restriction on rights under the Convention, the CERD Convention¹³⁶, and we say that the evidence before this Court shows that this standard is more than met in this case.

¹³³ *Immunities and Criminal Proceedings, Provisional Measures, Order*, p. 1169, para. 90. See also *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia), Provisional Measures, Order, I.C.J. Reports 2014*, pp. 157-158, para. 42 (defining irreparable harm where “[a]ny breach . . . may not be capable of remedy or reparation as it might not be possible to revert to the *status quo ante* . . .”).

¹³⁴ See *Application of the Convention on the Prevention and Punishment of the Crimes of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993*, p. 22, para. 44.

¹³⁵ See Karin Oellers-Frahm, “Article 41”, in Zimmerman *et al.*, *The Statute of the International Court of Justice: A Commentary*, pp. 1026, 1047.

¹³⁶ *Ukraine v. Russian Federation, Provisional Measures, Order*, para. 97.

15. This is not a case where the Court actually has to infer the ~~risk, the~~ future risk of harm only from past violations. While the history of damage and loss is of course pertinent to the case and we do rely upon it, the Court has evidence before it that irreparable prejudice is not only a real risk; it is the ongoing reality. For many, the *status quo ante* is becoming a distant memory. It will never be possible to erase the effects of the UAE's actions. Six United Nations Rapporteurs wrote to the UAE as follows, and this is found in Annex 11 to our Application:

“While we do not wish to prejudge the accuracy of these allegations, given the harm this order has on thousands of Qatari residents in the United Arab Emirates and Emirati residents in the State of Qatar, we consider the alleged situation of extreme gravity. Serious concerns are expressed at the numerous rights being infringed, including the right to movement and residence, family reunification, education, work, freedom of expression, health, freedom of religious practice, and the right to private property, without discrimination on any basis.”¹³⁷

Six Rapporteurs of the United Nations.

16. Mr President, Members of the Court, the harm identified by those Special Rapporteurs continues. Every day that is added to the 387 that families have already spent apart, students have spent away from their studies, business owners away from their businesses, home owners away from their homes, employees from their jobs or patients from their medical care, is a day that is lost and cannot be regained.

17. No Court decision — whether rendered in one year, two years, or three — could “wipe out” all of this damage and “restore” the *status quo ante*¹³⁸ — of course those words I take from the decision in the *Factory at Chorzów* case.

18. My colleague, Ms Amirfar, has already set out the ways in which Qataris have been affected, as well as the many human rights authorities that have reported on and expressed concern about the harm that the UAE's actions are having on individuals and families. I want to emphasize,

¹³⁷ Joint Communication from the Special Procedures Mandate Holders of the Human Rights Council to the United Arab Emirates, 18 Aug. 2017, p. 3, Ann. 11.

¹³⁸ See *Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47:

“The essential principle contained in the actual notion of an illegal act — a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals — is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it.”

respectfully, that these effects continue unabated. At the end of last year, the Office of the High Commissioner for Human Rights reported that:

“The decision of 5 June has led to cases of temporary or potentially durable separation of families across the countries concerned, which has caused psychological distress as well as some difficulties for some individuals to economically support their relatives left in Qatar or the other countries.

.....

The majority of cases remain unresolved and are likely to durably affect the victims, particularly those having experienced family separation, loss of employment or who have been barred from access to their assets.”¹³⁹

19. One case mentioned by my colleague, Ms Amirfar, was the case of Ms S. A., a Qatari who, prior to June 2017, lived in the UAE with her family¹⁴⁰. Her husband is Emirati and so are her four children. On 5 June 2017, she was traveling outside the UAE. Since that date, she has been unable to return to the UAE. She has therefore been separated from her children for over a year. As long as the UAE is allowed to continue its violations of the Convention, this family — and other cases too — will be forced to live apart indefinitely.

20. Another example is mentioned in the Fifth Report of the Qatari National Human Rights Committee’s ~~report~~ of June 2018, very recent. Ms R. K. is a Qatari married to an Emirati and mother of an Emirati girl¹⁴¹. She and her daughter lived in Qatar while her husband lived and worked in the UAE. They used to travel frequently between the two countries. However, since 5 June 2017, such visits are impossible. Given the UAE’s edicts and hostility to Qataris, Ms R. K. is scared that if her daughter leaves Qatar to visit her father she will not be allowed to return. That would result in an indefinite separation of mother and daughter. Neither husband and wife, nor father and daughter, know if or when it will be possible to visit each other again.

21. Mr. President, Members of the Court, we have heard that this harm is exacerbated as it plays out in a climate of fear that has been deliberately fuelled by the UAE. Some families, we are told, are even afraid of talking on the telephone. A Qatari woman with brothers in the UAE told Amnesty International that her brothers “are scared to speak to us even over the phone. The law

¹³⁹ OHCHR Technical Mission to the State of Qatar, 17-24 Nov. 2017, *Report on the Impact of the Gulf Crisis on Human Rights*, Dec. 2017, paras. 32, 64, AQ, Ann. 16; judges’ folder, tab 9.

¹⁴⁰ See *supra* pp. 40-41, para. 29 (Amirfar).

¹⁴¹ NHRC, *Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar*, June 2018, p. 17, AQ, Ann. 22.

does not allow them to sympathize with us. They are very reserved in the conversations we have, as if we were strangers.”¹⁴² The fear that is induced by the edict of which the Court has been told.

22. My colleagues also spoke of discriminatory infringements on the right to education and training¹⁴³. That harm, too, is of an irreparable nature and of indefinite duration. Mr. G. H. was in his final year of law at the University of Al Jazira¹⁴⁴ in the UAE. He studied there for three years, paying for his school fees himself. He has been unable to complete his studies. The university has not responded to his e-mails, and has not helped him to find an alternative solution¹⁴⁵.

23. Similarly, prior to June 2017, K. W. was a final-year student at Zayed University in Dubai. K. W. also worked as a jockey at Al Nasr Stable. On 10 June 2017, the university administration informed K. W. that he was “banned from studying” due to the “recent political developments”. K. W.’s life was turned on its head in one day. As stated to the NHRC, the National Human Rights Committee, “I lost my education, my work, and my future”¹⁴⁶.

24. Mr. President, Members of the Court, so long as Qataris are excluded from the UAE based on their national origin, individuals will be barred from pursuing their futures and mitigating the harm that they describe.

25. Many Qatari students, we believe, in the UAE have suffered this fate. Some remain without a means to pursue their education, to obtain degrees in the same subject or of the same quality, or even to obtain their transcripts in order to continue their studies elsewhere¹⁴⁷. Whilst taking a year off from education may not be seen as unusual, the detrimental impact increases exponentially as time goes on. A change, we respectfully suggest, is required *now* to stem the ever-increasing harm.

¹⁴² Amnesty International, *Gulf dispute: Six months on, individuals still bear brunt of political crisis* (14 Dec. 2017), <https://www.amnesty.org/en/documents/mde22/7604/2017/en/>.

¹⁴³ See *supra* p. 43, paras. 37-39 (Amirfar).

¹⁴⁴ The official spelling of the university’s name is the University of Jazeera.

¹⁴⁵ NHRC, *Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar*, June 2018, p. 20, AQ, Ann. 22.

¹⁴⁶ NHRC, *First Report Regarding the Human Rights Violations as a Result of the Blockade on the State of Qatar*, 13 June 2017, p. 10, AQ, Ann. 5.

¹⁴⁷ OHCHR Technical Mission to the State of Qatar, 17-24 Nov. 2017, *Report on the Impact of the Gulf Crisis on Human Rights*, Dec. 2017, para. 52, AQ, Ann. 16.

26. The future of those with jobs and businesses in the UAE has also been severely impacted by the measures, even for those who have lived in, and contributed to, the UAE for decades. Ms Amirfar also mentioned the story of Mr. H. A., a Qatari born in 1953, who told the National Human Rights Committee: “I reside in the Emirate of Abu Dhabi in the UAE since 30 years and I am working there. After the decision to sever relations with the State of Qatar, I was forced to leave everything in Abu Dhabi and return to my country, and I lost my work and my life.”¹⁴⁸

27. My colleagues have mentioned the hundreds of Qataris who were forced to leave homes and other properties in the UAE. They have described the barriers that prevent Qataris from selling these properties, or otherwise performing legal transactions. Are individuals expected to buy homes and settle where they are now located? Many are unsure of the fate of their current holdings, and are living with the stress caused by that uncertainty. To give just one example: three Qatari brothers inherited several properties from their father in Sharjah. In August last year, they told the National Human Rights Committee that they could no longer access the properties or receive rents¹⁴⁹. They did not know what had or would happen to their businesses or their land.

28. This harm, as you have heard, has been exacerbated by a lack of an effective legal mechanism through which individuals can challenge the discriminatory measures, or otherwise vindicate their rights. Ms Amirfar and Dr. Klein described this to the Court this morning.

29. These are ~~just~~ the stories of a few individuals and their families, but similar stories, we say, could have been told by many Qataris. As we have already mentioned, there are over 3,600 recorded marriages between Qataris and Emiratis. That gives some idea of the scale of the suffering. The stories of Qatari suffering that we have described tell of harm that can — and I used the phrase again — never be “wiped out”, and measures that *continue* to impact on their lives and the lives of those around them. Any hopes that this situation was temporary ~~are is~~ dissipating.

30. We would respectfully suggest that, in this case, the Court does not need to guess whether irreparable prejudice might happen in the future. The evidence shows that this type of harm exists today and continues to be manifest, as a result of the refusal of the United Arab

¹⁴⁸ NHRC, *100 Days Under the Blockade, Third Report on Human Rights Violations Caused by the Blockade Imposed on the State of Qatar*, 30 Aug. 2017, p. 7, AQ, Ann. 12.

¹⁴⁹ *Ibid.*

Emirates to comply with the CERD Convention. Only, we respectfully suggest, if this Court acts now to put an end to this suffering and privation will many Qataris see any relief.

C. Irreparable prejudice is the natural consequence of violations of the rights before the Court in this case

31. So this evidence shows, we submit, that the rights in dispute are at real risk of the irreparable prejudice that provisional measures are designed to prevent. And it is no surprise, because it is in the very nature of the breaches alleged — the breaches of these rights alleged — that these conditions are met. Irreparable prejudice indeed is the natural consequence of violation of the rights before the Court. I just want to spend a moment elaborating on this point.

32. So Ms Amirfar has already explained the priority attached by the international community to freedom from racial discrimination¹⁵⁰. Non-discrimination is a tenet, a fundamental tenet of human rights law, and, by definition, the consequences of compromising the prohibition are grave and widely felt. It undermines “the dignity and equality inherent in all human beings”, a well-known phrase that underpins the United Nations Charter and human rights law, including the CERD Convention¹⁵¹. The Preamble to the Convention recognizes that “any doctrine of superiority based on racial differentiation” is not only “scientifically false”, but also “morally condemnable, socially unjust and dangerous”¹⁵².

33. Ms Amirfar has also explained the provisions of the Convention that protect against racial discrimination. The UAE’s disregard of its obligations in the circumstances before this Court is — predictably — causing lasting prejudice at an individual and familial level, as well as to international peace and security. As early as June 2017, Amnesty International stated that “[t]he situation that people across the Gulf have been placed in shows utter contempt for human dignity”¹⁵³. The National Human *Rights Committee* Fifth Report, to which I have already referred, notes the multi-faceted nature of the harm: “[p]rolongation of the crisis and tragedy of the victims

¹⁵⁰ See *supra* pp. 31-32. paras. 3-6 (Amirfar).

¹⁵¹ United Nations General Assembly, *Universal Declaration of Human Rights*, 10 Dec.1948, 217 A (III), Preamble.

¹⁵² CERD, Preamble; judges’ folder, tab 1.

¹⁵³ Amnesty International, *Gulf/Qatar dispute: Human dignity trampled and families facing uncertainty as sinister deadline passes*, 19 June 2017, p. 1, AQ, Ann. 6.

while neither redressing the victims nor restoration [*sic*] of their rights, threatens international security and undermines mediation efforts”¹⁵⁴.

34. Mr. President, Members of the Court, in its provisional measures orders in prior cases that implicated the Convention between Georgia and the Russian Federation and between Ukraine and the Russian Federation, the Court decided that the rights invoked under the Convention in those proceedings — also drawn from Article 5 of the Convention — are *by their very nature* capable of irreparable prejudice¹⁵⁵. In coming to this conclusion in *Georgia v. Russian Federation*, one of the factors considered by the Court was whether the “persons concerned are exposed to privation, hardship, anguish and even danger to life and health”¹⁵⁶.

35. Whereas in *Ukraine v. Russian Federation*, the Court noted that “certain rights in question in [the] proceedings, in particular, the political, civil, economic, social and cultural rights stipulated in Article 5, paragraphs (c), (d) and (e) of the Convention, are of such a nature that prejudice to them is capable of causing irreparable harm”¹⁵⁷. And we respectfully suggest that many of the rights invoked by Qatar in these proceedings fall within these same categories identified by this honourable Court.

36. And this aligns with prior jurisprudence of this Court, in which it has found that there is a “serious possibility” of irreparable harm in cases that implicate the rights of individuals, particularly where there is a risk of privation, hardship, anguish, damage to life or health¹⁵⁸. Racial

¹⁵⁴ NHRC, *Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar*, June 2018, p. 62, Ann. 22.

¹⁵⁵ *Georgia v. Russian Federation, Provisional Measures, Order*, p. 353, para. 142; *Ukraine v. Russian Federation, Provisional Measures, Order*, para. 96.

¹⁵⁶ *Georgia v. Russian Federation, Provisional Measures, Order*, p. 396, para. 142.

¹⁵⁷ *Ukraine v. Russian Federation, Provisional Measures, Order*, para. 96.

¹⁵⁸ *United States Diplomatic and Consular Staff in Tehran, Provisional Measures, Order of 15 December 1979, I.C.J. Reports 1979*, p. 20, para. 42: “Whereas continuance of the situation the subject of the present request exposes the human beings concerned to privation, hardship, anguish and even danger to life and health and thus to a serious possibility of irreparable harm.”

See also, e.g. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Provisional Measures, Order of 1 July 2000, I.C.J. Reports 2000*, p. 127, paras. 40-43:

“Whereas the rights . . . to respect for the rules of international humanitarian law and for the instruments relating to the protection of human rights; and whereas it is upon the rights thus claimed that the Court must focus its attention in its consideration of this request for the indication of provisional measures; . . . Whereas, in the circumstances, the Court is of the opinion that persons, assets and resources present on the territory of the Congo, particularly in the area of conflict, remain extremely vulnerable, and that there is a serious risk that the rights at issue in this case, as noted in paragraph 40 above, may suffer irreparable prejudice.”

discrimination is, of course, also condemned by the international community, in part, because of its potential to cause “privation, anguish and hardship”. And that risk pertains to the rights invoked by Qatar.

37. So, we respectfully say that, in evaluating the future risk of harm, this Court should consider the irreparable prejudice that is the natural consequence of compromising such rights. And that’s an additional reason, we suggest, why the condition of risk of irreparable prejudice is made out.

D. The question of imminence is beyond doubt

38. I turn now to the third issue: imminence. In assessing whether the risk of harm is imminent, the Court has previously asked whether irreparable prejudice “could occur at any moment” or “could take place” before a decision on the merits¹⁵⁹.

39. This Court’s answers to these questions have considered, among other factors, evidence of past violations, the likelihood they might reoccur and the vulnerability of the populations¹⁶⁰.

40. And as I mentioned in my introductory remarks, in the provisional measures phase in *Ukraine v. The Russian Federation*, reports of human rights organizations proved critical to the Court’s assessment of these factors and, accordingly, to the factor of imminence. The Court “took

¹⁵⁹ *Jadhav Case, Provisional Measures, Order*, paras. 53-54:

“[T]he Court considers that, as far as the risk of irreparable prejudice to the rights claimed by India is concerned, the mere fact that Mr. Jadhav is under such a sentence and might therefore be executed is sufficient to demonstrate the existence of such a risk . . . This suggests that an execution could take place at any moment [after the end of August 2017], before the Court has given its final decision in the case.”;

Immunities and Criminal Proceedings, Provisional Measures, Order, p. 1148, para. 90: “Furthermore, that risk is imminent, in so far as the acts likely to cause such a prejudice to the rights claimed by Equatorial Guinea could occur at any moment.”

¹⁶⁰ *Georgia v. Russian Federation, Provisional Measures, Order*, p. 396, para. 143:

“Whereas the Court is aware of the exceptional and complex situation on the ground in South Ossetia, Abkhazia and adjacent areas and takes note of the continuing uncertainties as to where lines of authority lie; whereas, based on the information before it in the case file, the Court is of the opinion that the ethnic Georgian population in the areas affected by the recent conflict remains vulnerable; whereas the situation in South Ossetia, Abkhazia and adjacent areas in Georgia is unstable and could rapidly change; whereas, given the ongoing tension and the absence of an overall settlement to the conflict in this region, the Court considers that the ethnic Ossetian and Abkhazian populations also remain vulnerable; whereas, while the problems of refugees and internally displaced persons in this region are currently being addressed, they have not yet been resolved in their entirety . . .”

note” of two OHCHR reports on the human rights situation in Ukraine, as well as a report of the OSCE Human Rights Assessment Mission on Crimea¹⁶¹.

41. In this case, the United Arab Emirates is in continuous breach and the harm is being felt each and every day: the vulnerability of the population is self-evident. There is ample evidence before this Court — including multiple reports and correspondence from human rights bodies — that shows not only that the irreparable prejudice *could occur* before a decision on the merits, but that it *is occurring* on a continuous basis. There is no doubt, we suggest, that the risk of prejudice is real and imminent.

42. And Mr. President, Members of the Court, the enduring effects of the harm being caused to the rights in dispute were reiterated in that recent NHRC report, as follows: “[m]ost of the cases of victims and parties affected by the blockade, especially the mixed families, remain unresolved and the impact of the current crisis and its negative effects will remain for a long period of time”¹⁶².

43. In the same report, from June 2018, the NHRC wrote: “[t]his report includes cases of violations received by the NHRC, and those documented by the Committee, bringing the total number of documented violations to the tens of thousands, and increasing. To date, complaints are still being received [they went on] by the NHRC and the Compensation Claims Committee (CCC)”¹⁶³. And that report includes violations of the right to family, the right to education, the right

¹⁶¹ *Ukraine v. Russian Federation, Provisional Measures, Order*, para. 97:

“In this regard, the Court takes note of the report on the human rights situation in Ukraine (16 May to 15 August 2016), whereby the OHCHR acknowledged that ‘the ban on the Mejlis, which is a self-government body with quasi-executive functions, appears to deny the Crimean Tatars — an indigenous people of Crimea — the right to choose their representative institutions’, as well as of his report on the human rights situation in Ukraine (16 August to 15 November 2016), in which the OHCHR explained that none of the Crimean Tatar NGOs currently registered in Crimea can be considered to have the same degree of representativeness and legitimacy as the Mejlis, elected by the Crimean Tatars’ assembly, namely the Kurultai. The Court also takes note of the report of the OSCE Human Rights Assessment Mission on Crimea (6 to 18 July 2015), according to which ‘[e]ducation in and of the Ukrainian language is disappearing in Crimea through pressure on school administrations, teachers, parents and children to discontinue teaching in and of the Ukrainian language.’ The OHCHR has observed that ‘[t]he start of the 2016-2017 school year in Crimea and the city of Sevastopol confirmed the continuous decline of Ukrainian as a language of instruction’ (report on the human rights situation in Ukraine (16 August to 15 November 2016)). These reports show, *prima facie*, that there have been restrictions in terms of the availability of Ukrainian-language education in Crimean schools.”

¹⁶² NHRC, *Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar*, June 2018, p. 64, Ann. 22.

¹⁶³ *Ibid.*, p. 6.

to work, the right to property, the right to movement and residence, the right to health and the right to litigation¹⁶⁴.

44. In another report, Amnesty International reported *also* in June of this year, “a year on, the situation has not improved. Residents of the region are still left facing uncertain futures . . . families are still waiting to be reunited”¹⁶⁵.

45. Well, Mr. President, Members of the Court, as Ms Amirfar has mentioned, we did receive a number of documents from the UAE, at the beginning of this week, purporting to show mitigation measures; as she said, we will deal with this on rebuttal when we have heard what the UAE has to say about these documents, tomorrow. But among other things, Ms Amirfar ~~has~~ **already** demonstrated that these mitigation measures have already been shown as ineffective by independent third parties such as the ~~report~~ **statement** of the United Nations High Commissioner for Human Rights. And, as I have already explained, other reports, only from this very month, have shown that that harm is continuing.

46. Mr. President, it is clear that the population remains vulnerable and that even if problems were “currently being addressed” — and that’s a quote from the provisional measures order in *Georgia v. Russian Federation* — even if the problems were currently being addressed (which as evidence I have been discussing shows is *not* the case), provisional measures would be appropriate in so far as — and I quote again from the provisional measures order — “[problems] have not yet been resolved in their entirety”¹⁶⁶, and it must be clear at a minimum, that that *is* the fact

47. In summary, this is not therefore a case where the question is whether or not an event of prejudice may occur in the future. Here the damage is now and it is continuous. The condition of imminence is plainly made out.

48. And the United Arab Emirates ~~have~~ **has** had plenty of opportunities to resolve this situation, as Mr. Donovan has pointed out. It has received notifications from numerous authoritative bodies about the harm its actions are causing. Yet, they insist on imposing pressure as

¹⁶⁴ *Ibid.*

¹⁶⁵ Amnesty International, *One Year since the Gulf Crisis, Families are Left Facing an Uncertain Future*, 5 June 2018, available at <https://www.amnesty.org/en/latest/campaigns/2018/06/one-year-since-gulf-crisis-qatar-bahrain/>.

¹⁶⁶ *Georgia v. Russian Federation, Provisional Measures, Order*, p. 47, para. 143.

a mechanism of foreign policy with little regard, if any, for individual suffering. And in so doing, the UAE has also aggravated this dispute.

E. Final Remarks

49. Mr. President, I turn to my final remarks. There is no doubt, we suggest in conclusion, that the measures requested *are* urgent in order to prevent irreparable harm to the rights in dispute — those of Qatar and Qataris under the CERD Convention — and thus to protect the integrity of these proceedings.

50. And as the Court itself has recognized, these rights, the rights in question are such that, by their very nature, prejudice is capable of causing irreparable harm. In fact, irreparable harm is the natural consequence of infringements of such rights.

51. And that is made plain, I would suggest, by the evidence I have referred to. Any one of the stories that I or my colleagues have mentioned today is sufficient to show that the rights before this Court are at risk of imminent and irreversible damage.

52. Husbands and wives, children and parents, separated for over a year now. Every day that passes for them ~~would~~ *will* be a day of estrangement that can never be restored. Qataris who have been unable to access or complete medical care live indefinitely with the physiological and psychological restrictions that result. Qataris expelled from the UAE have lost jobs, properties, investments, access to education and opportunity — in short, they have been removed from their lives, their futures prejudiced and at risk of being forever altered. And there is no other conclusion, I would suggest, that these individuals have suffered, currently are suffering, and — unless this honourable Court acts — will continue to suffer privation, hardship, anguish. And so, the rights intended to be protected by the Convention will be subjected to prejudice that is irreparable in nature. And the cause, of course, we say, is the UAE's refusal to respect the prohibition on racial discrimination in the Convention.

53. Mr. President, I come full circle to where I, and indeed Dr. Al-Khulaifi, started. Provisional measures are necessary, they are urgent to protect the rights in dispute in this case, fundamental rights to be free from racial discrimination, and to ensure that this Court's final decision on the merits will have the intended effect — to vindicate the rights in question. And to

preserve the value of the rights subject to the proceedings, we very respectfully urge that the Court must act now.

54. With that respectful injunction, that concludes my remarks and — unless, Mr. President, I can be of further assistance — it also ends Qatar’s first round of oral submissions. It remains only for me to thank you, Mr. President, and honourable Members of the Court, for your kind attention.

The PRESIDENT: I thank Lord Goldsmith. Your statement indeed brings to an end the first round of oral observations of Qatar. The Court will meet again tomorrow at 10 a.m., to hear the first round of oral observations of the United Arab Emirates. This sitting is adjourned.

The Court rose at 12.45 p.m.
