



# INTERNATIONAL COURT OF JUSTICE

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## Press Release

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

#### **The Court indicates provisional measures to protect certain rights claimed by Qatar and orders the Parties to refrain from any action which might aggravate or extend the dispute**

THE HAGUE, 23 July 2018. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today delivered its Order on the Request for the indication of provisional measures submitted by Qatar in the case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates).

The Court begins by recalling that, on 11 June 2018, Qatar instituted proceedings against the United Arab Emirates (hereinafter the “UAE”) with regard to alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (hereinafter “CERD” or the “Convention”). In its Application, Qatar asserts *inter alia* that, on 5 June 2017, the UAE enacted and implemented a series of discriminatory measures directed against Qataris based on their national origin. The Applicant contends in particular that the UAE has expelled all Qataris within its territory and prohibited all Qataris from entering the UAE, thereby infringing certain rights guaranteed by CERD, notably the right to marriage and choice of spouse, the right to public health and medical care, the right to education and training, the right to own property, the right to work and the right to equal treatment before tribunals. The Application was accompanied by a request for the indication of provisional measures to protect Qatar’s rights under CERD pending a decision on the merits.

#### **Reasoning of the Court**

It should be recalled that the Court may indicate provisional measures only if the provisions relied on by the Applicant appear, *prima facie*, to afford a basis on which its jurisdiction could be founded. The Court must also satisfy itself that the rights whose protection is sought are at least plausible and that there is a link between those rights and the measures requested. However, the power of the Court to indicate provisional measures will be exercised only if there is urgency, 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.

## 1. Prima facie jurisdiction

The Court notes that Qatar seeks to found its jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article 22 of CERD. It observes in this regard that Article 22 of CERD makes the Court's jurisdiction conditional on the existence of a dispute arising out of the interpretation or application of the Convention.

The Court considers that, as evidenced by the arguments advanced and the documents placed before it, the Parties differ on the nature and scope of the measures taken by the UAE on 5 June 2017, as well as on the question whether they relate to rights and obligations under CERD. The Court notes that Qatar contends that the measures adopted by the UAE purposely targeted Qataris based on their national origin, in breach of CERD Articles 2 (condemnation of racial discrimination), 4 (prohibition of incitement to racial discrimination), 5 (prohibition of racial discrimination in the enjoyment of a number of civil, economic, social and cultural rights), 6 (effective protection and remedies against any acts of racial discrimination) and 7 (undertaking to adopt measures with a view to combatting racial discrimination). It also notes that the UAE firmly denies that it has committed any of these violations.

In the Court's view, the acts referred to by Qatar, in particular the statement of 5 June 2017 — which allegedly targeted Qataris on the basis of their national origin — whereby the UAE announced that Qataris were to leave its territory within 14 days and that they would be prevented from entry, and the alleged restrictions that ensued, including upon their right to marriage and choice of spouse, to education, as well as to medical care and to equal treatment before tribunals, are capable of falling within the scope of CERD ratione materiae.

The Court finds that the above-mentioned elements are sufficient at this stage to establish the existence of a dispute between the Parties concerning the interpretation or application of CERD.

The Court recalls that the terms of Article 22 of CERD establish procedural preconditions to be met before the seisin of the Court. Under this provision, the dispute referred to the Court must be a dispute “not settled by negotiation or by the procedures expressly provided for in this Convention”. As far as the first precondition is concerned, the Court observes inter alia that, in a letter dated 25 April 2018 and addressed to the Minister of State for Foreign Affairs of the UAE, the Minister of State for Foreign Affairs of Qatar referred to the alleged violations of CERD arising from the measures taken by the UAE on 5 June 2017 and stated that “it [was] necessary to enter into negotiations in order to resolve these violations and the effects thereof within no more than two weeks”. The Court considers that the letter contained an offer by Qatar to negotiate with the UAE with regard to the latter's compliance with its substantive obligations under CERD. Given the fact that the UAE did not respond to that formal invitation to negotiate, the Court is of the view that the issues raised in the present case had not been resolved by negotiations at the time of the filing of the Application. As regards the second precondition, the Court notes that, on 8 March 2018, Qatar deposited a communication with the CERD Committee. The Court does not consider it necessary at this stage of the proceedings to make a pronouncement on whether recourse to the procedures referred to in Article 22 of CERD constitute alternative or cumulative conditions, even if the seisin of the Court is conditional on referral to the Committee. The Court finds that the procedural preconditions for its seisin appear, at this stage, to have been complied with.

In light of the foregoing, the Court concludes that, *prima facie*, it has jurisdiction pursuant to Article 22 of CERD to deal with the case to the extent that the dispute between the Parties relates to the “interpretation or application” of the said Convention.

## **2. The rights whose protection is sought and the measures requested**

The Court begins by examining whether the rights claimed by Qatar on the merits, and for which it is seeking protection, are plausible.

The Court notes, on the basis of the evidence presented to it by the Parties, that the measures adopted by the UAE on 5 June 2017 appear to have targeted only Qataris and not other non-citizens residing in the UAE. Furthermore, the measures were directed to all Qataris residing in the UAE, regardless of individual circumstances. Therefore, it appears that some of the acts of which Qatar complains may constitute acts of racial discrimination as defined by the Convention. Consequently, the Court finds that at least some of the rights asserted by Qatar under Article 5 of CERD are plausible. This is the case, for example, with respect to the alleged racial discrimination in the enjoyment of rights such as the right to marriage and to choice of spouse, the right to education, as well as freedom of movement, and access to justice.

The Court then turns to the issue of the link between the rights claimed and the provisional measures requested (see Press Release No. 2018/26). It considers that the measures requested by Qatar are aimed not only at ending any collective expulsion of Qataris from the territory of the UAE, but also at protecting other specific rights contained in Article 5 of CERD. The Court concludes, therefore, that a link exists between the rights whose protection is being sought and the provisional measures being requested by Qatar.

## **3. Risk of irreparable prejudice and urgency**

The Court considers that certain rights in question in these proceedings are of such a nature that prejudice to them is capable of causing irreparable harm. It is of the view that a prejudice can be considered as irreparable when individuals are subject to temporary or potentially ongoing separation from their families and suffer from psychological distress; when students are prevented from taking their exams due to enforced absence or from pursuing their studies due to a refusal by academic institutions to provide educational records; or when the persons concerned are impeded from being able to physically appear in any proceedings or to challenge any measure they find discriminatory.

The Court notes that the UAE stated, in response to a question posed by a Member of the Court at the end of the oral proceedings, that, following the statement of 5 June 2017 by its Ministry of Foreign Affairs, no administrative orders have been issued under the Immigration Law to expel Qataris. The Court nonetheless notes that it appears from the evidence before it that, as a result of this statement, Qataris felt obliged to leave the UAE resulting in the specific prejudices to their rights described above. Moreover, in view of the fact that the UAE has not taken any official steps to rescind the measures of 5 June 2017, the situation affecting the enjoyment of their above-mentioned rights in the UAE remains unchanged.

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The Court concludes from all of the above considerations that the conditions required by its Statute for it to indicate provisional measures are met.

#### 4. Operative clause

At the end of its Order, the Court indicates

- by eight votes to seven, that the UAE must ensure that (i) families that include a Qatari, separated by the measures adopted by the UAE on 5 June 2017, are reunited; (ii) Qatari students affected by the measures adopted by the UAE on 5 June 2017 are given the opportunity to complete their education in the UAE or to obtain their educational records if they wish to continue their studies elsewhere; and (iii) Qataris affected by the measures adopted by the UAE on 5 June 2017 are allowed access to tribunals and other judicial organs of the UAE;
- by eleven votes to four, that both Parties must refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

#### Composition of the Court

The Court was composed as follows: President Yusuf; Vice-President Xue; Judges Tomka, Abraham, Bennouna, Cançado Trindade, Gaja, Sebutinde, Bhandari, Robinson, Crawford, Gevorgian, Salam; Judges ad hoc Cot, Daudet; Registrar Couvreur.

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Judges TOMKA, GAJA and GEVORGIAN append a joint declaration to the Order of the Court; Judge CANÇADO TRINDADE appends a separate opinion to the Order of the Court; Judges BHANDARI, CRAWFORD and SALAM append dissenting opinions to the Order of the Court; Judge ad hoc COT appends a dissenting opinion to the Order of the Court.

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A summary of the Order appears in the document entitled “Summary No. 2018/4”, to which summaries of the opinions and the declaration are annexed. This press release, the summary and the full text of the Order are available on the Court’s website ([www.icj-cij.org](http://www.icj-cij.org)), under the heading “Cases”.

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Note: The Court’s press releases do not constitute official documents.

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The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and,

second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the “World Court”, it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Court (ICC, the only permanent international criminal court, which was established by treaty and does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an international judicial body with an independent legal personality, established by the United Nations Security Council upon the request of the Lebanese Government and composed of Lebanese and international judges), the Mechanism for International Criminal Tribunals (MICT, mandated to take over residual functions from the International Criminal Tribunal for the former Yugoslavia and from the International Criminal Tribunal for Rwanda), the Kosovo Specialist Chambers and Specialist Prosecutor’s Office (an ad hoc judicial institution which has its seat in The Hague), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

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