



INTERNATIONAL COURT OF JUSTICE

APPLICATION OF THE INTERNATIONAL CONVENTION

ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

(QATAR v. UNITED ARAB EMIRATES)

**REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES TO
PRESERVE THE UNITED ARAB EMIRATES' PROCEDURAL RIGHTS
AND TO PREVENT QATAR FROM AGGRAVATING OR EXTENDING
THE DISPUTE**

SUBMITTED BY THE UNITED ARAB EMIRATES

22 March 2019



I.	INTRODUCTION	1
II.	IMPORTANT RELEVANT BACKGROUND AND FACTS UNDERLYING THIS REQUEST.....	1
III.	THE COURT’S JURISDICTION.....	12
IV.	THE REASONS UNDERLYING THIS REQUEST	14
	A. Qatar has abused its rights under the CERD by initiating two parallel proceedings based on the same facts before both the CERD Committee and this Court.....	15
	B. Qatar has failed to comply with the Court’s 23 July 2018 Order by hampering the UAE’s attempts to assist Qatari citizens, including by blocking access by Qatari citizens to the website by which Qatari citizens can apply for a permit to return to the UAE, and by using its national institutions and State-controlled media to inflame the dispute.....	21
V.	THIS REQUEST SEEKS TO PRESERVE THE UAE’S PROCEDURAL RIGHTS AND TO PREVENT QATAR FROM FURTHER AGGRAVATING OR EXTENDING THE DISPUTE.....	24
	A. The Court should grant this Request on an urgent basis to protect the UAE’s procedural rights in this case	25
	B. The Court should grant this Request on an urgent basis to prevent Qatar from further aggravating or extending the dispute	29
VI.	IF THIS REQUEST IS NOT GRANTED URGENTLY, THE UAE WILL SUFFER IRREPARABLE HARM	30
VII.	THE SPECIFIC MEASURES REQUESTED	33

I. INTRODUCTION

1. The United Arab Emirates (the “**UAE**”) refers to the Application filed with the Court by the State of Qatar (“**Qatar**”) on 11 June 2018 (the “**Application**”) instituting proceedings against the UAE. In accordance with Article 41 of the Statute of the Court (the “**Statute**”) and Articles 73 to 75 of the Rules of Court (the “**Rules**”), the UAE submits the present urgent request (the “**Request**”) that, as further elaborated below, the Court indicate provisional measures in order to: (i) preserve the UAE’s procedural rights in this case; and (ii) prevent Qatar from further aggravating or extending the dispute between the Parties pending a final decision in this case.
2. The UAE respectfully urges the Court to treat this Request as a matter of urgency and set a hearing for the earliest possible date. The UAE further requests that, pending the meeting of the Court, the President of the Court exercise his powers under Article 74(4) of the Rules and call upon Qatar to act in such a way as will enable any order the Court may make on the Request to have its appropriate effects.

II. IMPORTANT RELEVANT BACKGROUND AND FACTS UNDERLYING THIS REQUEST

3. As the UAE has explained in this and other proceedings before this Court, the real issue between Qatar and the UAE is Qatar’s long-standing and notorious record of supporting and promoting terrorist and extremist groups that target vulnerable communities and individuals around the world.¹ Exacerbating

¹ See, e.g., *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Verbatim Record, CR 2018/15, 29 June 2018 at 4.30 p.m., page 38, paragraph 10. See also *Appeal*

this, Qatar has systematically used Al Jazeera and other media outlets owned, controlled or funded by Qatar as a platform to disseminate false news and to support extremist and terrorist groups. Through its State-controlled media propaganda, Qatar has given these groups legitimacy and reach throughout the Middle East and North Africa (“**MENA**”) region and the world. These groups are responsible for the intentional killing, rape, torture, maiming and forced displacement of countless innocent civilians.

4. During the period from 2011 to 2013, the threats posed by extremist groups reached a critical point in the MENA region. The violence from which vulnerable individuals and groups in the region were suffering, and in which Qatar was centrally involved as a State-sponsor of terrorism and extremism, demanded a collective regional response. As a result, between November 2013 and November 2014, the UAE, Qatar, the Kingdom of Bahrain, the State of Kuwait, the Sultanate of Oman and the Kingdom of Saudi Arabia concluded a series of binding agreements under the auspices of the Gulf Cooperation Council (the “**GCC**”) in order to address the threats posed by extremist groups (the “**Riyadh Agreements**”).²
5. Pursuant to the Riyadh Agreements, Qatar expressly undertook not to support “any of the organizations, groups or individuals that threaten the security of

Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar), Memorial of the Kingdom of Bahrain, the Arab Republic of Egypt, the Kingdom of Saudi Arabia and the United Arab Emirates, Volume I of VII, 27 December 2018, Chapter I, Section 3 and Chapter II, **Annex 1**.

² First Riyadh Agreement, 23 and 24 November 2013, United Nations Registration Number 55378 (“**First Riyadh Agreement**”), **Annex 2**; Mechanism Implementing the Riyadh Agreement, 17 April 2014, United Nations Registration Number 55378 (“**Mechanism Implementing the Riyadh Agreement**”), **Annex 3**; Supplementary Riyadh Agreement, 16 November 2014, United Nations Registration Number 55378 (“**Supplementary Riyadh Agreement**”), **Annex 4**.

the [GCC] states” or any type of “antagonistic media”.³ Qatar further undertook “[n]ot to give refuge, employ, or support [. . .] to any person or a media apparatus that harbors inclinations harmful to any [GCC] state”.⁴ Notably, the Supplementary Riyadh Agreement expressly referred to Qatar’s State-owned and controlled news network Al Jazeera.⁵ In the Riyadh Agreements, Qatar also expressly agreed “[n]ot to support external gatherings or groups in Yemen, Syria or any destabilized area, which pose a threat to the security and stability of GCC Countries”.⁶

6. Despite these express undertakings by Qatar and its implicit acceptance of the factual elements of which they are composed, Qatar has continued to support and promote terrorist organisations and to incite extremism through the use of its propaganda mouthpiece, Al Jazeera (particularly the Arabic-language Al Jazeera outlets), and other media outlets owned, controlled and funded by Qatar.⁷ Qatar has continued to support and promote rebel factions engaged in violent conflict against the internationally recognised Government in Yemen. It also has used its State-controlled media outlets, such as Al Jazeera, to spread false news about the measures that have been introduced by the UAE

³ First Riyadh Agreement, Articles 1 and 2, **Annex 2** (quotes translated from Arabic original).

⁴ Supplementary Riyadh Agreement, Article 3(c), **Annex 4** (quote translated from Arabic original).

⁵ See Supplementary Riyadh Agreement, Article 3(d), **Annex 4**.

⁶ Mechanism Implementing the Riyadh Agreement, Article 2(c), **Annex 3** (quote translated from Arabic original). See also First Riyadh Agreement, Article 3, **Annex 2**.

⁷ See *Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)*, Memorial of the Kingdom of Bahrain, the Arab Republic of Egypt, the Kingdom of Saudi Arabia and the United Arab Emirates, Volume I of VII, 27 December 2018, Chapter II, Section 4, **Annex 1**.

in response to Qatar’s violations of international law that are the subject of the present case.⁸

7. Qatar’s actions threaten not only the stability and security of the UAE and of the other GCC States. They also threaten the stability and security of many other areas in the world and the lives of numerous vulnerable communities and individuals that suffer the consequences of terrorism.
8. During the first half of 2017, Qatar exacerbated the unrest in the MENA region by seeking to revoke the Riyadh Agreements.⁹ In light of this, and in view of Qatar’s persistent breaches of its international law obligations, on 5 June 2017, the UAE terminated diplomatic relations with Qatar.¹⁰ It

⁸ See Section IV.B below.

⁹ Qatar signalled that it was seeking to resile from the Riyadh Agreements in a letter to the Secretary-General of the GCC on 19 February 2017. Qatar claimed that “the subject of this agreement has been exhausted” and called upon the GCC States to “agree to terminate the Riyadh agreement which has been overtaken by events at the international and regional levels”. Qatar also claimed – for the first time – that the Riyadh Agreements constituted an “abandonment” of the GCC Charter and did not “serve the interests and objectives of the GCC”, calling for a return to the GCC principles. Letter from HE Mohammed Bin Abdulrahman Al-Thani (Minister of Foreign Affairs of Qatar) to HE Dr Abdullatif Bin Rashid Al Zayani (Secretary-General of the GCC), 19 February 2017, **Annex 5** (quotes translated from Arabic original).

¹⁰ The Arab Republic of Egypt, the Kingdom of Saudi Arabia, the Kingdom of Bahrain, the Republic of Chad, the Union of the Comoros, the Republic of Maldives, the Islamic Republic of Mauritania, the Republic of Senegal and the Republic of Yemen also severed diplomatic ties with Qatar. See “Egypt cut ties with Qatar for ‘supporting terrorist organizations’”, *State Information Service*, 8 June 2017 (featuring Foreign Ministry Statement issued on 5 June 2017), **Annex 6**; “Kingdom of Saudi Arabia severs diplomatic and consular relations with Qatar 3 Jeddah”, *Saudi Press Agency*, 5 June 2017, **Annex 7**; “Statement of the Kingdom of Bahrain on the severance of diplomatic relations with the State of Qatar”, *Ministry of Foreign Affairs of the Kingdom of Bahrain*, 5 June 2017, **Annex 8**; “Chad shuts down Qatar embassy”, *Emirates News Agency*, 23 August 2017, **Annex 9**; “Comoros severs diplomatic relations with Qatar”, *Saudi Press Agency*, 7 June 2017, **Annex 10**; “Statement by the Government of Maldives”, *Ministry of Foreign Affairs of the Republic of Maldives*, 5 June 2017, **Annex 11**; “La Mauritanie décide de rompre ses relations diplomatiques avec Qatar”, *Agence Mauritanienne d’Information*, 6 June 2017, **Annex 12**; “Senegal, Gabon join boycott of Qatar”, *Middle East Monitor*, 9 June 2017, **Annex 13**; “Yemen cuts diplomatic ties with Qatar: state news agency”, *Reuters*, 5 June 2017, **Annex 14**. Additionally, the Hashemite Kingdom of Jordan and the Republic of the Niger downgraded diplomatic relations with

subsequently took a series of legal measures against Qatar's Government in order to induce it to comply with its legal obligations. These measures were carefully gauged to have the least possible impact on Qatari citizens. Each of the measures was lawful. None of them violated any international law obligation of the UAE.

9. Qatar's State-controlled media, including Al Jazeera, continue to inflame the dispute by making and repeating incendiary and false claims against the UAE.¹¹ For example, Qatar falsely asserts that the UAE has imposed a travel ban on Qataris to prevent them from entering the UAE. This is not true. Qatar has no evidence of this and, indeed, the evidence confirms that such an assertion is false.
10. The facts are that, prior to 5 June 2017, Qatari citizens could travel to the UAE without a visa or any other prior permission. Following its termination of relations with Qatar, the UAE implemented a system whereby Qatari nationals must obtain prior permission to travel to the UAE. Requiring prior permission to travel is in all events not the same as imposing a travel ban. The principle of obtaining permission prior to travel applies to many other nationalities. There is no prohibition of such measures under customary international law. It is a basic and legitimate exercise of sovereignty that is used by governments worldwide.¹²

Qatar. See "Jordan downgrades relations with Qatar and bans Al Jazeera", *The National*, 7 June 2017, **Annex 15**; "Niger recalls ambassador to Qatar", *Khaleej Times*, 10 June 2017, **Annex 16**.

¹¹ See Section IV.B below. This is particularly the Arabic-language Al Jazeera outlets, the content of which is often radically different from Al Jazeera's English-language outlets.

¹² See, e.g., United Nations, Office of the High Commissioner for Human Rights, *Migration, Human Rights and Governance: Handbook for Parliamentarians No. 24*, 2015, pages 19–20 ("[I]nternational law recognizes the right of everyone to leave any country, including their own, and to return to their own country. However, it does not establish a right of entry to

11. Not only was the imposition of a requirement of prior permission to travel to the UAE entirely legal but the UAE sought to minimise any possible inconvenience for Qatari citizens.
12. For example, on 11 June 2017, in order to facilitate the entry of Qatari citizens into the UAE, the Ministry of Interior of the UAE set up a telephone hotline to help Qatari citizens to use a procedure to apply for a permit to enter the UAE.¹³ Subsequently, the Ministry of Interior of the UAE even set up special access for Qatari citizens on its official visa application website by which Qatari citizens could apply for a permit to return to the UAE.¹⁴ The telephone hotline can still be accessed, in the event that a Qatari citizen encounters technical problems with the website.
13. Using these procedures, large numbers of Qatari citizens have continued to enter and exit the UAE. Official immigration entry and exit records confirm that, between June 2017 and June 2018, there were thousands of movements by Qatari citizens across UAE borders.¹⁵ Similarly, from 1 June 2018 through 31 December 2018, the number of registered entries and exits of

another country: states retain their sovereign prerogative to decide on the criteria for admission and expulsion of non-nationals [. . .].”).

¹³ See Exhibit 2 of the documents deposited by the UAE on 25 June 2018 in the context of Qatar’s 11 June 2018 Request for the Indication of Provisional Measures. See also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Order on the Request for the Indication of Provisional Measures, 23 July 2018, Dissenting Opinion of Judge Crawford, paragraph 6.

¹⁴ See Federal Authority For Identity & Citizenship website, available at: <https://echannels.moi.gov.ae>

¹⁵ See Exhibit 14 of the documents deposited by the UAE on 25 June 2018 in the context of Qatar’s 11 June 2018 Request for the Indication of Provisional Measures.

Qatari nationals into and out of the UAE amounted to 2,876.¹⁶ All of these movements were facilitated by the work of the hotline or the website.

14. Indeed, during the first six months of 2018 alone, the hotline received 1,390 applications. Of this total number, only 12 applications were rejected for security or other reasons.¹⁷ Even more applications were lodged using the hotline or the website in the second half of 2018. In fact, the updated evidence submitted herewith demonstrates that, from 9 July 2018 through 22 December 2018, no fewer than 3,563 applications by Qatari nationals were lodged with the UAE authorities for entry permits to the UAE. Over 94% of those applications (or 3,353 applications in numerical terms) were accepted.¹⁸ Indeed, when reviewing the entire period from when the entry requirements were announced in June 2017, the UAE has approved over 95% of applications by Qatari citizens for entry into the UAE.
15. The hotline and the website clearly have been examples of the UAE's successful efforts to minimise the inconvenience to Qatari citizens of the measures taken to induce Qatar to comply with its legal obligations. Perversely, however, Qatar hampers the UAE's attempts to assist Qatari citizens who wish to return to the UAE.

¹⁶ See Letter from the United Arab Emirates Federal Authority for Identity and Citizenship to the Ministry of Foreign Affairs and International Cooperation of the United Arab Emirates, 10 January 2019, **Annex 17** (summarising statistics and attaching detailed supporting statistical records).

¹⁷ See Exhibit 3 of the documents deposited by the UAE on 25 June 2018 in the context of Qatar's 11 June 2018 Request for the Indication of Provisional Measures, page 1. See also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Order on the Request for the Indication of Provisional Measures, 23 July 2018, Dissenting Opinion of Judge Crawford, paragraph 6.

¹⁸ See Letter from the United Arab Emirates Federal Authority for Identity and Citizenship to the Ministry of Foreign Affairs and International Cooperation of the United Arab Emirates, 10 January 2019, **Annex 17**.

16. Qatar has thus made a number of false and unsupported statements regarding the efficiency of the hotline and website. Qatar has done so in multiple ways, including in this proceeding, through a number of national bodies and through its State-controlled media, such as Al Jazeera.¹⁹ Contrary to Qatar’s unfounded statements, the extensive travel-logs of movements by Qatari citizens across UAE borders prove the efficient working of the hotline and website.
17. Now, the UAE has come to learn that, despite this – or, more likely, because of this – early this year, Qatar began blocking internet access from Qatar to the website, meaning that people living there are prevented by Qatar from being able to access the website. It appears that it is therefore no longer possible for Qataris, including Qatari students, families and individuals who might want to bring proceedings before the UAE’s courts, to access the website from Qatar, so as to facilitate their return to the UAE. At the same time as trying to prevent its own citizens from finding out how to return to the UAE, Qatar continues to disseminate false news regarding the UAE’s

¹⁹ See, e.g., *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Verbatim Record, CR 2018/14, 29 June 2018 at 10 a.m., pages 35–36, paragraphs 20–24 (where Qatar makes three incompatible and speculative claims regarding the hotline: first, that it is a “police security channel” to which Qataris would be uncomfortable to resort; second, and inconsistently, that the hotline in fact has received a large number of calls from Qatari nationals; and, third, that such calls have resulted in a surprisingly low number of applications, disregarding the fact that it is for the individual to decide whether or not to make an application via the hotline (or the website) and that this matter is hence outside the UAE’s control); “Qatar: Hotline for mixed-families a face-saving act”, *Al Jazeera*, 11 June 2017, **Annex 18** (“Qatar’s National Human Rights Committee has dismissed a move by three Gulf Arab states, Saudi Arabia, United Arab Emirates (UAE) and Bahrain, to assist mixed-citizenship families who face the prospect of being split up as ‘little more than a face-saving’ exercise.”). See also Section IV.B below.

measures among United Nations bodies and through its State-controlled media.²⁰

18. Presumably, the success of the UAE's attempts to assist Qatari citizens is the reason why Qatar apparently has become worried about the website. Its existence undermines the legal theories based on fiction that have been conjured by Qatar. Qatar is trying to block its own people from travelling to the UAE but in a way that Qatar can still try to blame the UAE. The UAE respectfully submits that such duplicity and deception should be noted by the Court and borne in mind at all stages of this proceeding. Qatar has once more been caught red-handed creating false evidence.
19. Qatar is apparently not content only to disseminate false news through its propaganda tool Al Jazeera and other State-controlled media outlets. It is apparently also willing to fabricate evidence and create false facts, obviously expecting not to be caught. Qatar presumably anticipates being able to make further false allegations against the UAE before the Court and elsewhere about Qataris being unable to enter the UAE. This manipulation of evidence by Qatar exposes to the Court Qatar's true motivations in prosecuting its claim against the UAE under the International Convention on the Elimination of All Forms of Racial Discrimination (the "**CERD**"). It clearly has nothing to do with protecting its citizens.
20. As noted above, the measures that the UAE took against Qatar's Government were intended to induce Qatar to comply with its obligations under international law. However, despite its undertakings to the contrary, Qatar chose not to put an end to its unlawful activities. Instead, in an attempt to divert attention from its own misconduct, Qatar has, through Al Jazeera and

²⁰ See paragraphs 52–54 below.

other media outlets owned, controlled and funded by Qatar and otherwise, spread false accusations about the measures that have been introduced by the UAE in response to Qatar’s violations of international law.²¹

21. In addition, Qatar initiated two abusive parallel proceedings against the UAE under the dispute resolution provisions of the CERD.
22. The first was a procedure before the Committee on the Elimination of Racial Discrimination (the “**CERD Committee**”). The second was the present case, filed on 11 June 2018, just one month after the UAE was notified of the CERD Committee proceeding on 7 May 2018. As is explained more fully below, this pursuit of parallel proceedings under the same, linear dispute resolution procedure constitutes an abuse of the CERD. Moreover, each of the procedures is frivolous and vexatious. They are based on meritless allegations, unsupported by tenable evidence, of purported violations by the UAE of the CERD. Further, even if factually accurate (*quod non*), Qatar’s claims based on alleged discrimination on the basis of nationality fall manifestly outside the scope of the CERD. Although the Court took no definitive position on this question in its 23 July 2018 Order regarding Qatar’s 11 June 2018 Request for the Indication of Provisional Measures (the “**23 July 2018 Order**”), it is notable that a significant number of Judges of the Court took this view. That much is clear from these Judges’ dissenting opinions and declarations appended to the Court’s 23 July 2018 Order. In short, none of Qatar’s assertions has any merit.
23. Qatar also has severely aggravated and extended the dispute between it and the UAE – including after the 23 July 2018 Order – by, *inter alia*:

²¹ See, e.g., “UAE continues to violate ICJ decision”, *Qatar Tribune*, 24 January 2019, **Annex 19**. See also Section IV.B below.

- (i) re-instating its pending CERD communication by referring the matter again to the CERD Committee on 29 October 2018 after it had abandoned those proceedings by its Application instituting proceedings before this Court;²²
 - (ii) hampering the UAE's attempts to assist Qatari citizens, including by blocking within its territory access to the UAE Government website by which Qatari citizens can apply for a permit to return to the UAE;²³ and
 - (iii) using its national institutions and State-owned, controlled and funded media outlets, including Al Jazeera, to disseminate false accusations regarding the UAE, including untruthful accusations in relation to the issues in dispute in this proceeding.²⁴
24. Accordingly, provisional measures are urgently required to: (i) protect the UAE's procedural rights both under the CERD and in this proceeding from Qatar's abusive parallel claims; and (ii) prevent Qatar from further aggravating and extending the dispute between the Parties. If this Request is not granted urgently, the UAE's procedural rights in the present proceeding will be irreparably harmed and the Parties' dispute might become impossible to resolve.

²² See Section IV.A below.

²³ See Section IV.B below.

²⁴ See Section IV.B below.

III. THE COURT'S JURISDICTION

25. The Court has not yet decided the question of jurisdiction in this case. Rather, in its 23 July 2018 Order, the Court determined only that it had *prima facie* jurisdiction pursuant to Article 22 of the CERD.²⁵

26. As the Court explained in its 23 July 2018 Order, a decision by the Court to indicate provisional measures in a case:

[I]n no way prejudices the question of the jurisdiction of the Court to deal with the merits of th[at] case or any questions relating to the admissibility of the Application or to the merits themselves. It leaves unaffected the right of the Governments of Qatar and the UAE to submit arguments in respect of those questions.²⁶

27. In its submissions related to Qatar's 11 June 2018 Request for the Indication of Provisional Measures, the UAE expressed its objections to jurisdiction and admissibility, *inter alia*, as follows:

[E]ven taking the factual allegations made by Qatar at face value, those allegations do not concern prohibited *racial* discrimination as defined in the Convention, or other prohibited measures falling within the scope of the Convention. The dispute thus clearly falls outside the scope *ratione materiae* of the Convention, such that the Court is without jurisdiction.

[. . .]

[T]he crucial, initial, threshold question is whether the Convention applies at all to the measures complained of by Qatar. On Qatar's own assertion, those measures are either directed principally against Qatar itself, or, to the extent that they are directed at, or

²⁵ See 23 July 2018 Order, paragraph 41.

²⁶ 23 July 2018 Order, paragraph 78.

affect Qatari individuals, such impact is based purely on the fact of their current Qatari nationality or citizenship.²⁷

28. The UAE respectfully maintains this position, as well as the entirety of its arguments on jurisdiction. The UAE is making the present Request without prejudice to its position on jurisdiction and it expressly reserves all of its rights in this respect. Thus, neither the present Request nor the Court's decision on it shall affect the UAE's right to submit arguments in respect of the Court's jurisdiction over this case and the admissibility of the Application. The UAE expressly reserves its right to submit arguments in respect of those questions at the appropriate stage of this proceeding.
29. Putting to one side the UAE's ongoing objections to the jurisdiction of the Court, the Court has made clear in this and other cases that, in order to indicate provisional measures, it "need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case".²⁸ Rather, the Court has confirmed that it only needs to conclude that "the provisions relied on by the Applicant appear, *prima facie*, to afford a basis on which its jurisdiction could be founded".²⁹
30. It is not disputed that, in its 23 July 2018 Order, the Court found that it had *prima facie* jurisdiction over the present case.³⁰ Of course, there was nothing in the language of the 23 July 2018 Order that could lead to a conclusion that

²⁷ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Verbatim Record, CR 2018/13, 28 June 2018 at 10 a.m., page 38, paragraphs 15 and 18.

²⁸ 23 July 2018 Order, paragraph 14. *See also Jadhav Case (India v. Pakistan)*, Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017, page 236, paragraph 15.

²⁹ 23 July 2018 Order, paragraph 14. *See also Jadhav Case (India v. Pakistan)*, Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017, page 236, paragraph 15.

³⁰ *See* 23 July 2018 Order, paragraph 41.

its *prima facie* jurisdiction extended only to provisional measures requested by Qatar. On the contrary, that *prima facie* jurisdiction also extends to this Request. As demonstrated in the Sections below, this Request meets all the other requirements for the Court to indicate provisional measures.

IV. THE REASONS UNDERLYING THIS REQUEST

31. As noted in Section II above, contrary to its obligations under international law, Qatar has systematically supported and promoted terrorist and extremist groups that target vulnerable communities and individuals. It also has persistently used Al Jazeera and other State-controlled media outlets as a propaganda tool and platform to legitimise these groups and to disseminate false news. As a consequence, and after many attempts to persuade Qatar to desist in its misconduct, on 5 June 2017, the UAE terminated diplomatic relations with Qatar. The UAE subsequently took a series of lawful measures against Qatar's Government to induce Qatar to comply with its obligations under international law.
32. Unfortunately, Qatar still has not ended its unlawful actions. Instead, it initiated two parallel proceedings against the UAE based on the same frivolous and meritless allegations of violations of the CERD. By initiating these parallel proceedings, Qatar has abused its rights under the CERD. These parallel proceedings also constitute a violation of the UAE's rights under the CERD as well as of its procedural rights in this case.
33. Further, Qatar has aggravated and extended the dispute and made it more difficult to resolve by taking a series of actions that constitute a clear violation of the Court's 23 July 2018 Order.

A. Qatar has abused its rights under the CERD by initiating two parallel proceedings based on the same facts before both the CERD Committee and this Court

34. Qatar has abused its rights under the CERD by initiating two parallel proceedings, based on the same facts, before the CERD Committee and this Court. Thus, on 8 March 2018, Qatar filed a Communication with the CERD Committee under Article 11 of the CERD (the “**Pending CERD Communication**”) claiming that the UAE had breached the CERD by allegedly implementing a series of so-called “Coercive Measures” announced on 5 June 2017. The Pending CERD Communication was transmitted to the UAE through a *note verbale* by the Secretary-General of the United Nations (High Commissioner for Human Rights) on 7 May 2018. That same *note verbale* informed the UAE that the CERD Committee had given it until 7 August 2018 to file its observations to Qatar’s Pending CERD Communication.³¹
35. On 11 June 2018, Qatar lodged an Application with the Court alleging virtually identical facts and breaches.³² The filing of this case before the

³¹ See *State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, *Note Verbale* from the Secretary-General of the United Nations (High Commissioner for Human Rights) to the Permanent Representative of the United Arab Emirates to the United Nations Office at Geneva, 7 May 2018, transmitting Qatar’s Communication Submitted Pursuant to Article 11 of the International Convention on the Elimination of all Forms of Racial Discrimination, 8 March 2018, **Annex 20**.

³² The identical nature of the factual and legal claims put forward in this case and in the Pending CERD Communication is stark and undeniable. The overall chronology and factual matrix underlying the Pending CERD Communication are the same as those underlying the current proceeding brought before the Court. Qatar also is instituting the parallel proceedings on the basis of the alleged violation of virtually identical CERD provisions. See *State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, *Note Verbale* from the Secretary-General of the United Nations (High Commissioner for Human Rights) to the Permanent Representative of the United Arab Emirates to the United Nations Office at Geneva, 7 May 2018, transmitting Qatar’s Communication Submitted Pursuant to Article 11 of the International Convention on the Elimination of all Forms of Racial Discrimination, 8 March 2018, paragraph 57, **Annex 20** (“UAE has violated its obligations under (*inter alia*)

Court constituted an abandonment by Qatar of the Pending CERD Communication. However, after the Court issued its 23 July 2018 Order and, on 25 July 2018, fixed the time limits for the Parties' written submissions on the merits,³³ Qatar re-instated the Pending CERD Communication by "refer[ring] the matter again to the [CERD] Committee" on 29 October 2018.³⁴

36. This attempt by Qatar to have two parallel proceedings under the CERD that progress at the same time is inconsistent with Article 22 of the CERD. Article 22 envisages that States Party to that Convention are entitled to resort to this Court to settle disputes with respect to the interpretation or application of the CERD. However, leaving aside the fact that Qatar's claims do not even relate to the interpretation or application of the CERD,³⁵ Article 22 of the CERD specifically restricts this recourse to be the final stage of a carefully crafted linear and hierarchical dispute resolution process. Article 22 provides:

Any dispute between two or more States parties with respect to the interpretation or application of this

CERD Articles 2, 4, 5, and 6, as well as the moral principles underlying the CERD and the customary law principle of nondiscrimination on arbitrary grounds."); Application, paragraph 58 ("The UAE has contravened its specific obligations under CERD Articles 2, 4, 5, 6, and 7, as well as the customary international law principle of non-discrimination [. . .].").

³³ See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Order of 25 July 2018.

³⁴ *State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, *Note Verbale* from the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) to the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva, 31 October 2018, transmitting *Note Verbale* from the Permanent Mission of the State of Qatar to the United Nations Office at Geneva to the Committee on the Elimination of Racial Discrimination, 29 October 2018, page 2 of Qatar's *Note Verbale*, **Annex 21** ("[. . .] the Permanent Mission of the State of Qatar hereby informs the Committee that the State of Qatar elects to exercise its right under Article 11(2) to refer the matter again to the Committee").

³⁵ See Section III above.

Convention, *which is not settled by negotiation or by the procedures expressly provided for in this Convention*, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement. (Emphasis added.)

37. Article 22 does not make difficult reading; it requires no complex interpretation. It is clear from the plain wording of this provision that the CERD envisages that the treaty-specific dispute resolution mechanism it offers to its States Party (i.e., “the procedures expressly provided for in this Convention”) must be exhausted before a dispute is referred to this Court.
38. The Court itself has confirmed the linear nature of dispute resolution under the CERD. In the case concerning the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, the Court held that:
- [I]n their ordinary meaning, the terms of Article 22 of CERD, namely “[a]ny dispute ... which is not settled by negotiation or by the procedures expressly provided for in this Convention”, establish preconditions to be fulfilled before the seisin of the Court.³⁶
39. This holding by the Court confirms that Qatar is legally obliged to exhaust the procedures expressly provided in the CERD “before the seisin of the Court”. The ordinary meaning of the term “precondition” confirms that much.
40. However, in deliberate violation of the CERD’s clear dispute resolution process, Qatar submitted its Application to this Court without exhausting the procedure before the CERD Committee. Then, further exacerbating its abuse

³⁶ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment of 1 April 2011, I.C.J. Reports 2011, page 128, paragraph 141 (citing Article 22 of the CERD).

of the CERD dispute resolution process, after submitting its Application to the Court, Qatar re-initiated the process before the CERD Committee.³⁷

41. Qatar has thus created a *lis pendens* that constitutes an abuse of the CERD dispute resolution mechanism. Through its conduct, Qatar has deliberately manipulated and distorted that dispute resolution mechanism so as to force the UAE to defend itself in two overlapping proceedings – between the same Parties, commenced under the same instrument and involving the same allegations of fact and law.
42. The rationale of the doctrine of *lis pendens* and of the actions that courts can take to avoid such duplicative litigation is to avoid conflicting judgments, to prevent expensive parallel litigation and to protect parties from abusive or oppressive litigation tactics. In exercising their inherent power to safeguard and manage the proceedings, courts have the power to enjoin a party from pursuing the parallel proceedings. Thus, the exercise of the Court’s inherent power to manage the present proceedings requires it to order Qatar not to proceed with the parallel proceedings before the CERD Committee.
43. Qatar’s abuse of process threatens the breakdown of the legitimate institutions established by the CERD and makes a mockery of the systemic integrity of its dispute resolution mechanism. As further explained in Section V.A below, Qatar’s abusive procedural conduct also threatens irreparable harm to the UAE’s procedural rights in the present proceeding.
44. Even more worryingly, Qatar’s abusive pursuit of two parallel proceedings in respect of the same dispute before two separate bodies undermines the authority of the Court and the integrity of the Court’s procedures. It

³⁷ See paragraph 35 above.

represents a tacit challenge by Qatar to the Court's paramount but final role in the dispute resolution steps provided in Article 22.

45. Furthermore, Qatar's deliberate pursuit of parallel proceedings leads to the inevitable risk that conflicting decisions, findings, rulings and orders will result. Indeed, a number of the dissenting and separate opinions appended to the 23 July 2018 Order already exposed a fundamental disagreement in legal principle between a plurality of Judges and the CERD Committee in relation to the fundamental question of whether the CERD covers differences of treatment on the basis of nationality. For example, Judges Tomka, Gaja and Gevorgian noted that:

It would be difficult to give weight to this view of the CERD Committee since it gives no reason for its interpretation that different treatment based on nationality constitutes racial discrimination under CERD, albeit only to a certain extent.³⁸

46. Similarly, highlighting one of the legal difficulties of Qatar's case, Judge Crawford clearly explained that:

[. . .] Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) distinguishes on its face between discrimination on grounds of national origin (equated to racial discrimination and prohibited per se) and differentiation on grounds of nationality (not prohibited as such). [. . .] Prima facie at least, the UAE measures at issue here, deriving from the Statement of 5 June 2017, target Qataris on account of their present nationality, not their national origin. This does not mean that collective expulsion of persons of a certain nationality is lawful under international law; it is not. It is simply that it is not

³⁸ 23 July 2018 Order, Joint Declaration of Judges Tomka, Gaja and Gevorgian, paragraph 5.

apparently covered by the CERD, the only basis for jurisdiction relied on by Qatar.³⁹

47. Equally, Judge Salam categorically stated:

I am convinced that the Court does not have prima facie jurisdiction *ratione materiae*, in so far as the dispute between the Parties does not appear to concern the interpretation or application of CERD. It is clear from Article 1 of CERD that this Convention applies to “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin”. There is, however, no mention of discrimination on the basis of “nationality”, the object of the Applicant’s complaints.⁴⁰

48. The risk of conflicting legal outcomes and directions in parallel proceedings that address the same substantive issues will inevitably result in procedural irregularities and legal conflict, as well as in prolongation and aggravation of the dispute that cannot be undone. It also poses systemic challenges for the working relationships of the relevant international courts and tribunals. As a precedent, Qatar’s actions present institutional challenges for the Court itself. These challenges cannot be overstated. The reaching of contradictory legal outcomes could set a precedent that undermines the authority of the Court, the proper functioning of dispute resolution procedures agreed in treaties like the CERD and even the unity of international law itself.

³⁹ 23 July 2018 Order, Dissenting Opinion of Judge Crawford, paragraph 1.

⁴⁰ 23 July 2018 Order, Dissenting Opinion of Judge Salam, paragraph 2 (citing Article 1 of the CERD).

B. Qatar has failed to comply with the Court’s 23 July 2018 Order by hampering the UAE’s attempts to assist Qatari citizens, including by blocking access by Qatari citizens to the website by which Qatari citizens can apply for a permit to return to the UAE, and by using its national institutions and State-controlled media to inflame the dispute

49. In paragraph 79(2) of its 23 July 2018 Order, the Court ordered that “[b]oth Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve” (the “**Non-Aggravation Order**”). Despite the fact that the Non-Aggravation Order expressly referred to both Parties, Qatar has manifestly failed to comply with its obligations under that Order. Qatar has continued to aggravate and extend the dispute that it has brought to the Court.
50. As explained above, after the Court issued the 23 July 2018 Order, Qatar re-instated the Pending CERD Communication by referring the matter again to the CERD Committee.⁴¹ By doing so, Qatar has created a significant risk that the CERD Committee proceeding and the case before this Court, which are now proceeding in parallel, reach contradictory legal outcomes.⁴² If that risk materialises, the final decision of the Court in this case would not put an end to the Parties’ dispute. Indeed, in the words of the Arbitral Tribunal in the *MOX Plant Case (Ireland v. United Kingdom)*, “a procedure that might result in two conflicting decisions on the same issue would not be helpful to

⁴¹ See *State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, *Note Verbale* from the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) to the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva, 31 October 2018, transmitting *Note Verbale* from the Permanent Mission of the State of Qatar to the United Nations Office at Geneva to the Committee on the Elimination of Racial Discrimination, 29 October 2018, **Annex 21**.

⁴² See paragraphs 45–48 above.

the resolution of the dispute between the Parties”.⁴³ Therefore, by re-instating the Pending CERD Communication, Qatar has further aggravated and extended the dispute and made it more difficult to resolve.

51. In addition, Qatar is hampering the UAE’s attempts to assist Qatari citizens. For example, early this year, Qatar blocked within its territory access by people living in Qatar to the website by which Qatari citizens can apply for a permit to return to the UAE.⁴⁴ In other words, Qatar is creating false evidence as it seeks to establish false facts. Qatar is – perversely – actually sabotaging the UAE’s efforts to assist Qatari nationals, including Qatari students, mixed family members and other vulnerable individuals. It is intentionally undermining the UAE’s efforts to provide Qatari nationals with a procedure to access the UAE and, for example, exercise their rights before the UAE’s courts. There could not be a clearer example of aggravation of the dispute between the Parties. And Qatar has been caught red-handed fabricating evidence, once again.
52. Further, the Non-Aggravation Order self-evidently required Qatar to cease broadcasting hate speech and false statements concerning the UAE, particularly in relation to the issues in dispute in this proceeding. Yet, Qatar has continued using its national institutions and State-owned, controlled and funded media outlets, including Al Jazeera, to describe the UAE’s lawful measures as a “siege”.⁴⁵ Qatar also has continued disseminating false

⁴³ *The MOX Plant Case (Ireland v. United Kingdom)*, Order No. 3, Suspension of Proceedings on Jurisdiction and Merits, and Request for Further Provisional Measures, 24 June 2003, paragraph 28.

⁴⁴ See Video recordings taken in Doha of blocked Federal Authority for Identity and Citizenship website, **Annex 22 (A to C)**.

⁴⁵ “Al Marri calls for extensive probe against siege nations”, *The Peninsula*, 16 September 2018, **Annex 23**; “Marri urges international community to pressure siege countries to stop

statements. For example, it has continued disseminating the incorrect assertions that the UAE is “obstructing and preventing Qataris from resorting to the courts” of the UAE and violating the rights of Qatari students by preventing them to return to the UAE.⁴⁶ Equally, Qatar has continued using its national bodies to spread fallacies, including among United Nations bodies, that the UAE’s measures constitute “gross and systematic violations and discriminatory measures against Qatari citizens and expatriates”.⁴⁷

53. The UAE has demonstrated to this Court, both at the public hearings on 27–29 June 2018 and with evidence supplied with this Request, that thousands of Qatari citizens have successfully used the hotline and the website available to assist them.⁴⁸ Despite these proven truths, Qatar continues even now to disseminate false accusations regarding the UAE’s compliance with the 23 July 2018 Order. For example, Qatar has used its National Human Rights Committee to claim that the UAE has committed more than 700 violations of that Order.⁴⁹ These false and unfounded accusations have been repeated in Qatari-controlled media outlets. Indeed, those outlets have recycled false allegations that “[h]uman rights violations continue due to measures taken by the UAE” and that the UAE continues to violate “the rights of women, children, persons with disabilities and the elderly” and to deny Qatari citizens

human rights violations”, *Qatar Tribune*, 30 September 2018, **Annex 24**; “UN probes siege violations of Qatari students’ rights”, *The Peninsula*, 20 January 2019, **Annex 25**.

⁴⁶ “Al Marri calls for extensive probe against siege nations”, *The Peninsula*, 16 September 2018, **Annex 23**; “Report on UAE violations next month, says al-Marri”, *Gulf Times*, 6 December 2018, **Annex 26**; “UN probes siege violations of Qatari students’ rights”, *The Peninsula*, 20 January 2019, **Annex 25**.

⁴⁷ See, e.g., “Al Marri calls for extensive probe against siege nations”, *The Peninsula*, 16 September 2018, **Annex 23**.

⁴⁸ See Section II above.

⁴⁹ See “‘745’ Emirati violations of ICJ decisions”, *Al-Watan*, 24 January 2019, **Annex 27**; “NHRC unveils report detailing continued rights violation by UAE despite ICJ decision”, *The Peninsula*, 24 January 2019, **Annex 28**.

“access to justice and the exercise of their right of access to courts and tribunals”.⁵⁰ The evidence clearly contradicts Qatar’s false contentions that “only a very small number of cases have been resolved”,⁵¹ that there is no mechanism for the implementation of the 23 July 2018 Order in the UAE and that the UAE has failed to take any measures for this purpose.⁵²

54. Qatar’s inflammatory conduct and attacks against the UAE via its national bodies and its State-controlled media outlets directly violate the Non-Aggravation Order.

V. THIS REQUEST SEEKS TO PRESERVE THE UAE’S PROCEDURAL RIGHTS AND TO PREVENT QATAR FROM FURTHER AGGRAVATING OR EXTENDING THE DISPUTE

55. Article 41(1) of the Statute provides that the Court has “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”.

56. In addition, the Court has made clear that:

When [. . .] indicating provisional measures for the purpose of preserving specific rights, the Court may also indicate provisional measures with a view to

⁵⁰ “UAE continues to violate ICJ decision”, *Qatar Tribune*, 24 January 2019, **Annex 19**. See also “Despite the ICJ Order ... Qatari accounts document Emirati violations”, *Al Jazeera*, 24 January 2019, **Annex 29**.

⁵¹ “UAE continues to violate ICJ decision”, *Qatar Tribune*, 24 January 2019, **Annex 19** (quote translated from Arabic original).

⁵² See “‘745’ Emirati violations of ICJ decisions”, *Al-Watan*, 24 January 2019, **Annex 27**; “UAE continues to violate ICJ decision”, *Qatar Tribune*, 24 January 2019, **Annex 19**. See paragraphs 11–15 above (referring to the availability of a hotline and a website to Qatari nationals, to evidence proving the frequent use of these mechanisms by Qataris to apply to obtain permission to travel to the UAE and to the high ratio of approval of such applications by the UAE).

preventing the aggravation or extension of a dispute whenever it considers that the circumstances so require [. . .].⁵³

57. Accordingly, this Request seeks to: (i) protect the UAE’s procedural rights in this case; and (ii) prevent Qatar from further aggravating and extending the dispute between the Parties.

A. The Court should grant this Request on an urgent basis to protect the UAE’s procedural rights in this case

58. Like all parties that come before this Court, the UAE enjoys fundamental procedural rights in this proceeding. Among other rights, the UAE is entitled to procedural fairness, to an equal opportunity to present its case and to proper administration of justice. Indeed, the Court’s jurisprudence makes clear that:

[T]he equality of the parties to the dispute must remain the basic principle for the Court. [. . .] The provisions of the Statute and Rules of Court [. . .] are designed to secure a proper administration of justice, and a fair and equal opportunity for each party to comment on its opponent’s contentions.⁵⁴

59. Likewise, the Court has made clear that the “equality of the parties must be preserved when they are involved, pursuant to Article 2, paragraph 3, of the Charter, in the process of settling an international dispute by peaceful

⁵³ 23 July 2018 Order, paragraph 76. *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, page 139, paragraph 103.

⁵⁴ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment of 27 June 1986, I.C.J. Reports 1986, page 26, paragraph 31.

means”.⁵⁵ The Court has further confirmed that “[t]he principle of equality of the parties follows from the requirements of good administration of justice”.⁵⁶ In other words, the proper administration of international justice entails necessarily that Qatar and the UAE must be given equal opportunities to be heard and to obtain justice.⁵⁷

60. As explained in Section IV.A above, through its actions, Qatar has created a *lis pendens* situation, where two parallel proceedings bearing on the exact same dispute and amongst the same parties are progressing simultaneously. In doing so, Qatar has acted against basic notions of procedural fairness that require a party to avoid duplicative and potentially conflictual litigation. Unless the UAE’s procedural rights are preserved on an urgent basis, there can be no possibility of a fair and just outcome in the present proceeding. There can be no equality of the Parties when Qatar has unilaterally taken for itself two opportunities to litigate against the UAE in simultaneous and overlapping proceedings.
61. Qatar’s pursuit of simultaneous claims both before this Court and under Article 11 of the CERD is entirely inconsistent with the hierarchical and linear dispute resolution procedure set out clearly in Article 22 of the CERD. By pursuing in parallel the very same CERD complaint against the UAE before two mutually exclusive *fora*, Qatar abuses the CERD dispute

⁵⁵ *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, page 153, paragraph 27.

⁵⁶ *Judgments of the Administrative Tribunal of the ILO upon complaints made against UNESCO*, Advisory Opinion of 23 October 1956, I.C.J. Reports 1956, page 86.

⁵⁷ See R. Kolb, *The International Court of Justice* (Hart Publishing 2013), page 1119. See also S. Rosenne, *The Law and Practice of the International Court, 1920-2005: Volume III* (Martinus Nijhoff 4ed. 2006), pages 1048–1049; B. Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Cambridge University Press 2006), pages 290–291 and 293.

resolution mechanism and its rights under the CERD. If Qatar is not enjoined from proceeding with the Pending CERD Communication, there will no longer be a linear and incremental dispute resolution procedure, as set out in the CERD.

62. Critically, as previously explained,⁵⁸ if these proceedings are allowed to continue in parallel, both the UAE and Qatar would be exposed to a scenario where the proceedings may lead to divergent or contradictory outcomes, in respect of both legal findings and findings of fact. Such an approach would create procedural and legal irregularities. It would pose serious systemic challenges for the working relationships of the relevant international courts and tribunals.

63. Even if Article 22 of the CERD were not drafted as it is, the general principles of international law concerning procedural fairness and equality between parties dictate that multiple proceedings based upon the same facts, under the same instrument and between the same parties must not proceed in parallel. Indeed, the dangers of parallel proceedings are well documented. As one commentator rightly explained:

Such duplicative practices draw heavily on scarce judicial resources, carry the risk of legal havoc, which might be caused by inconsistent decisions, and place an undue burden on some or all of the parties due to increased litigation expenses and reduced legal certainty.

[. . .]

The co-existence of two or more simultaneous proceedings before different fora places an unusually heavy burden on the parties to litigation, which are required to maintain two legal teams or shuttle

⁵⁸ See Section IV.A above.

between two or more tribunals. It also entails the investment of unnecessarily duplicative judicial time and resources by courts and tribunals that are faced with similar (if not identical) tasks and yet are unable to rely on the work of each other.⁵⁹

64. As the defending Party, the burden of duplicative litigation in this case falls disproportionately on the UAE. The parallel proceedings that Qatar is actively pursuing are advancing simultaneously. The UAE has already been required to file multiple submissions in the parallel CERD Committee proceeding.⁶⁰ And that proceeding continues and is anticipated to keep overlapping with the procedural schedule of the present case.
65. Further, to the extent that procedural steps in the CERD Committee proceeding precede those in the present case, the UAE will be forced to choose between forsaking its rights to mount a full defence in the CERD Committee proceeding or sacrificing its right to procedural equality in the present case. Qatar's abusive procedural misconduct must urgently be brought to an end.
66. The Court has an inherent power and duty to safeguard the integrity of the proceedings before it.⁶¹ The UAE requests that, in exercise of that power and in light of the facts set out above, the Court enjoin Qatar from further pursuing the Pending CERD Communication. This is a necessary

⁵⁹ Y. Shany, *The Competing Jurisdictions of International Courts and Tribunals* (Oxford University Press 2003), pages 155–156.

⁶⁰ *See State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, *Note Verbale* from the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) to the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva, 14 December 2018, page 1, **Annex 30** (“Noting that the United Arab Emirates replied to [the Pending CERD Communication] by Notes verbales of 7 August, 7 and 30 November 2018 [. . .]”) (Emphasis in original.).

⁶¹ *Nuclear Tests (Australia v. France)*, Merits, Judgment of 20 December 1974, I.C.J. Reports 1974, pages 259–260, paragraph 23.

consequence of Qatar’s decision to invoke formal adjudication by the Court under Article 22 of the CERD. Any different approach would render meaningless the principles of procedural fairness and of the equality of the parties. It would require the UAE to defend itself against the same allegations in two simultaneous and overlapping procedures. It would create a significant risk of inconsistent findings of fact and law. It would create procedural and legal chaos. It would set a precedent that undermines the authority of the Court, the proper functioning of dispute resolution procedures agreed in treaties like the CERD and even the unity of international law.

B. The Court should grant this Request on an urgent basis to prevent Qatar from further aggravating or extending the dispute

67. In its 23 July 2018 Order, the Court ordered that “[b]oth Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.”⁶² As set out in Section IV.B above, Qatar has ignored this Non-Aggravation Order. In fact, Qatar has aggravated and extended the dispute and made it more difficult to resolve by, *inter alia*:

- (i) re-instating its Pending CERD Communication by referring the matter again to the CERD Committee on 29 October 2018 after it had abandoned it;⁶³
- (ii) hampering the attempts of the UAE to assist Qatari citizens, including by blocking within its territory access to the UAE Government website

⁶² 23 July 2018 Order, paragraph 79(2).

⁶³ See Section IV.A above.

by which Qatari citizens can apply for a permit to return to the UAE;⁶⁴
and

(iii) using its national institutions and State-owned, controlled and funded media outlets, including Al Jazeera, to disseminate false accusations regarding the UAE.⁶⁵

68. The Court should therefore grant this Request on an urgent basis to prevent Qatar from further aggravating or extending the dispute.

VI. IF THIS REQUEST IS NOT GRANTED URGENTLY, THE UAE WILL SUFFER IRREPARABLE HARM

69. The provisional measures set out in Section VII below are urgently required to prevent irreparable damage to the UAE's procedural rights as well as further aggravation and extension of the dispute by Qatar.

70. There is a real and imminent risk that irreparable prejudice will be caused to the UAE's procedural rights before any final judgment can be rendered by the Court in this proceeding. The CERD Committee is now seized of the very question in dispute in the present proceeding before this Court. Indeed, the CERD Committee recently requested that the UAE make any further submission on issues of jurisdiction or admissibility, including the exhaustion of all available domestic remedies, by 14 January 2019.⁶⁶ This submission

⁶⁴ See Section IV.B above.

⁶⁵ See Section IV.B above.

⁶⁶ See *State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, *Note Verbale* from the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) to the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva, 14 December 2018, **Annex 30**.

was duly made.⁶⁷ The Committee further indicated that any preliminary question will be examined at the CERD Committee's 98th Session that will take place from 23 April to 10 May 2019.⁶⁸ This Court will not have issued a final decision by that date. As already explained, there is a clear risk that this Court and the CERD Committee will reach contradictory decisions on issues of fact, jurisdiction and merits.⁶⁹ The irreparably harmful consequences of this to the UAE's rights and to the resolution of the dispute that Qatar has brought to the Court have been discussed above.⁷⁰

71. In the case on *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*, the Court found that provisional measures can and should be granted where the right of a State to conduct arbitral proceedings and negotiations without interference faces imminent risk of irreparable harm through the conduct of an opposing State party.⁷¹ In that same case, the Court also made clear that provisional measures can and should be granted when a State's breach of its procedural

⁶⁷ *State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, *Note Verbale* from the Permanent Mission of the United Arab Emirates to the United Nations Office and Other International Organizations at Geneva to the Secretariat of the Office of the High Commissioner for Human Rights, 14 January 2019, transmitting the Supplemental Response on Issues of Jurisdiction and Admissibility of the United Arab Emirates, 14 January 2019, **Annex 31**.

⁶⁸ *See State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, *Note Verbale* from the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) to the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva, 14 December 2018, **Annex 30**.

⁶⁹ *See* Section IV.A above.

⁷⁰ *See* Section V above.

⁷¹ *See 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, page 147, paragraphs 42–48.

rights “may not be capable of remedy or reparation as it might not be possible to revert to the *status quo ante*” prevailing before that breach.⁷²

72. Both principles apply with equal force in the present case. The Court should grant the Request to prevent Qatar’s conduct from interfering in the UAE’s right to defend itself directly in this proceeding. Further, the Court should grant the Request because the consequences of Qatar’s abuse of the CERD dispute resolution mechanism may not be capable of remedy or reparation as it might not be possible to revert to the *status quo ante* prevailing before that abuse. Indeed, as explained in Section V.A, if Qatar is not enjoined from proceeding with the Pending CERD Communication, the UAE will be forced to choose between forsaking its rights to mount a full defence in the CERD Committee proceeding or sacrificing its right to procedural equality in the present case. The UAE also will have to defend itself against the same allegations in two simultaneous and overlapping procedures. And Qatar will succeed in unilaterally granting itself two parallel and simultaneous opportunities to litigate against the UAE in breach of the CERD dispute resolution proceeding. Further, there will be a significant risk of inconsistent findings of fact and law. All of which is precisely the kind of prejudice that cannot be undone and that must be prevented through the indication of provisional measures.

73. In addition, if this Request is not granted urgently, Qatar will continue aggravating and extending the dispute, making it impossible to resolve. It is perversely harming its own citizens and hampering the UAE’s attempts to assist them, including by preventing them from accessing the website by

⁷² *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, page 147, paragraph 42.

which Qatari citizens can apply for a permit to return to the UAE. Through its national bodies and State-controlled media outlets, Qatar will continue to disseminate false and inflammatory statements about the UAE and the present dispute, maliciously damaging the UAE's reputation and adversely affecting in a significant way the prospects of the resolution of the dispute. If Qatar is not ordered to cease aggravating and extending the dispute, there could be severe and irreparable consequences in the immediate future for vulnerable individuals living in the region.

VII. THE SPECIFIC MEASURES REQUESTED

74. As has been set out above, Qatar's conduct, including its conduct since 23 July 2018, has aggravated and continues to aggravate and extend the dispute before the Court, making it more difficult to resolve. That conduct also poses an imminent risk of further irreparable prejudice to the UAE's rights. For these reasons, the UAE respectfully requests that the Court order that:

- (i) Qatar immediately withdraw its Communication submitted to the CERD Committee pursuant to Article 11 of the CERD on 8 March 2018 against the UAE and take all necessary measures to terminate consideration thereof by the CERD Committee;
- (ii) Qatar immediately desist from hampering the UAE's attempts to assist Qatari citizens, including by un-blocking in its territory access to the website by which Qatari citizens can apply for a permit to return to the UAE;
- (iii) Qatar immediately stop its national bodies and its State-owned, controlled and funded media outlets from aggravating and extending the dispute and making it more difficult to resolve by disseminating false

accusations regarding the UAE and the issues in dispute before the Court; and

(iv) Qatar refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

75. The UAE reserves its right to amend this Request.
76. The UAE respectfully urges the Court to treat this Request as a matter of extreme urgency and set a hearing at the earliest possible date.
77. The UAE further requests that, pending the meeting of the Court, the President of the Court exercise his powers under Article 74(4) of the Rules and call upon Qatar to act in such a way as will enable any order the Court may make on the Request to have its appropriate effects.

Respectfully submitted,



HE Dr Hissa Abdullah Ahmed Al-Otaiba

Ambassador of the United Arab Emirates to The Kingdom of the Netherlands

Agent of the United Arab Emirates

Done at The Hague on 22 March 2019