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Summary

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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 rejects the Request for the indication of provisional measures submitted by the 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”). The Application was accompanied by a Request for the indication of provisional measures. By an Order dated 23 July 2018, the Court indicated certain provisional measures directed at the UAE and ordered that both Parties refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve. On 22 March 2019, the UAE in turn submitted a Request for the indication of provisional measures, in order to “preserve the UAE’s procedural rights” and to “prevent Qatar from further aggravating or extending the dispute between the Parties pending a final decision in th[e] case”.

I. PRIMA FACIE JURISDICTION (PARAS. 15-16)

The Court observes that it may indicate provisional measures only if there is, prima facie, a basis on which its jurisdiction could be founded, but need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case. That is so whether the request for the indication of provisional measures is made by the applicant or by the respondent in the proceedings on the merits. The Court recalls that, in its Order of 23 July 2018 indicating provisional measures in the present case, it concluded 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”. The Court sees no reason to revisit its previous finding in the context of the present Request.

II. THE PROVISIONAL MEASURES REQUESTED BY THE UAE (PARAS. 17-29)

The Court recalls that its power to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights of the parties in a case, pending its decision on the merits thereof. It follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong to either party. Therefore, the Court may exercise this power only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible. It observes that, at this stage of the proceedings, it

is not called upon to determine definitively whether the rights which the UAE wishes to see protected exist; it need only decide whether the rights claimed by the UAE, and for which it is seeking protection, are plausible rights, taking account of the basis of the Court's prima facie jurisdiction in the present proceedings. Thus, these alleged rights must have a sufficient link with the subject of the proceedings before the Court on the merits of the case.

With respect to the first provisional measure requested, namely that the Court order that Qatar immediately withdraw its Communication submitted to the Committee on the Elimination of Racial Discrimination (hereinafter the "CERD Committee") and take all necessary measures to terminate consideration thereof by that Committee, the Court considers that this measure does not concern a plausible right under CERD, but rather the interpretation of the compromissory clause in Article 22 of CERD and the permissibility of proceedings before the CERD Committee when the Court is seised of the same matter. The Court has already examined this issue in its Order of 23 July 2018, noting that:

“Although the Parties disagree as to whether negotiations and recourse to the procedures referred to in Article 22 of CERD constitute alternative or cumulative preconditions to be fulfilled before the seisin of the Court, the Court is of the view that it need not make a pronouncement on the issue at this stage of the proceedings . . . Nor does it consider it necessary, for the present purposes, to decide whether any electa una via principle or lis pendens exception are applicable in the present situation.”

The Court does not see any reason to depart from these views at the current stage of the proceedings in this case.

Regarding the second measure requested — that “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” — the Court considers that this measure relates to obstacles allegedly created by Qatar to the implementation by the UAE of the provisional measures indicated in the Order of 23 July 2018. It does not concern plausible rights of the UAE under CERD which require protection pending the final decision of the Court in the case. As the Court has already stated, “[t]he judgment on the merits is the appropriate place for the Court to assess compliance with the provisional measures”.

Since the first two provisional measures requested do not relate to the protection of plausible rights of the UAE under CERD pending the final decision in the case, the Court considers that there is no need for it to examine the other conditions necessary for the indication of provisional measures.

The third and fourth provisional measures requested by the UAE relate to the non-aggravation of the dispute. In this connection, the Court recalls that measures aimed at preventing the aggravation or extension of a dispute can only be indicated as an addition to specific measures to protect rights of the parties. With regard to the present Request, the Court has not found that the conditions for the indication of specific provisional measures are met and thus it cannot indicate measures solely with respect to the non-aggravation of the dispute. The Court further recalls that it has already indicated in its Order of 23 July 2018 that the Parties “shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve” and that this measure remains binding on the Parties.

III. CONCLUSION (PARAS. 30-31)

The Court concludes from the foregoing that the conditions for the indication of provisional measures under Article 41 of its Statute are not met. It also recalls that its decision in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case, any

questions relating to the admissibility of the Application, or any issues to be decided at the merits stage. It leaves unaffected the right of the Governments of Qatar and the UAE to submit arguments in respect of those questions.

OPERATIVE CLAUSE (PARA. 32)

The full text of the final paragraph of the Order reads as follows:

“For these reasons,

THE COURT,

By fifteen votes to one,

Rejects the Request for the indication of provisional measures submitted by the United Arab Emirates on 22 March 2019.

IN FAVOUR: President Yusuf; Vice-President Xue; Judges Tomka, Abraham, Bennouna, Cançado Trindade, Donoghue, Gaja, Bhandari, Robinson, Crawford, Gevorgian, Salam, Iwasawa; Judge ad hoc Daudet;

AGAINST: Judge ad hoc Cot.”

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

Declaration of Vice-President Xue

Vice-President Xue voted in favour of the Court's decision to reject the UAE's Request for the indication of provisional measures, but disagrees with some of the Court's reasoning as regards the Court's rejection of the third and fourth measures requested by the UAE.

Vice-President Xue is of the view that the third and fourth measures, which are each characterized as relating to the non-aggravation of the dispute, are sufficiently covered by the Court's Order of 23 July 2018, by which the Parties are required to "refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve" (Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II), p. 434, para. 79 (2)). The third and fourth measures requested by the UAE are therefore superfluous, and may be rejected on this ground.

The Court, however, reasons that measures aimed at the non-aggravation of the dispute can only be indicated as an addition to specific measures aimed at protecting the rights of the parties. Since the Court has declined to indicate any specific measures in the present case, it concludes that it cannot indicate the third and fourth measures requested by the UAE, which relate solely to non-aggravation. Vice-President Xue considers that adding such a restrictive qualification to the Court's power to indicate provisional measures may unduly restrain the power of the Court under Article 41 of the Statute and Article 75 of the Rules of Court.

Provisional measures proceedings, which exist in almost all legal systems, are intended to ensure due administration of justice and effective settlement of disputes. At the international level, however, these proceedings have another dimension. As the principal judicial organ of the United Nations, the Court is entrusted to settle disputes between States in accordance with international law, and in so doing it contributes to the maintenance of international peace and security. As the Court observed in its provisional measures Order in the Frontier Dispute (Burkina Faso/Mali) case, incidents may occur which not only aggravate or extend a dispute, but also comprise a resort to force which is irreconcilable with the principle of the peaceful settlement of disputes. In these situations, the Court has not only the power, but also the duty to indicate such provisional measures as may conduce to the due administration of justice.

In the practice of the Court, it is not unusual that, in cases involving use of force or serious violations of human rights and international humanitarian law, a provisional measure of non-aggravation of the dispute is requested or considered as the primary measure to be taken in light of the circumstances. Moreover, the questions whether a provisional measure of non-aggravation may be indicated alone and whether the Court should exercise its power to do so proprio motu have long been debated among the judges of the Court, as evidenced by many dissenting and separate opinions dealing with these issues.

It is noted that, since the Pulp Mills case, the Court has consistently treated measures of non-aggravation as ancillary to measures for the purpose of preserving specific rights. It is on the basis of this jurisprudential development that the present Order is intended to further clarify the issue. This effort, in Vice-President Xue's view, is too big of a step, and the Court may find its hands tied in future situations calling for an active response.

Joint declaration of Judges Tomka, Gaja and Gevorgian

Judges Tomka, Gaja and Gevorgian have voted with the majority for the rejection of the Respondent's Request for the indication of provisional measures, but do not agree with the statement made in the Order concerning prima facie jurisdiction. Referring to their previous joint declaration concerning the Request for the indication of provisional measures submitted by the Applicant, they consider that the present dispute still does not fall within the scope of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter "CERD") and, prima facie, the Court lacks jurisdiction.

They consider that the same conclusion should be made when the Court examines further requests for the indication of provisional measures submitted in the same case, irrespective of whether a request is submitted by the Applicant or the Respondent.

Accordingly, the present Request for the indication of provisional measures should be rejected. Furthermore, they consider that the Court should have completed its analysis in view of assessing whether the rights claimed by the Respondent are based on CERD.

Separate opinion of Judge Abraham

In his separate opinion, Judge Abraham expresses his reservations concerning, first, the Court's treatment of the question of prima facie jurisdiction and, second, the reasons for which the Court rejects the first two provisional measures requested by the United Arab Emirates.

As regards the first point, Judge Abraham considers that, in the present case, the Court was not required to address the question of prima facie jurisdiction, in so far as it found that the other conditions necessary for the indication of provisional measures were not met. Judge Abraham recalls that the Court's jurisdiction to entertain a request for provisional measures, which derives from Article 41 of its Statute, and its jurisdiction to entertain the merits of a case, which is based on the title of jurisdiction invoked in the principal claim, should not be confused. Judge Abraham notes that since prima facie jurisdiction to entertain the principal proceedings is one of the cumulative conditions required for the Court to be able to indicate provisional measures, in finding that a request should be rejected, it is sufficient for one of those conditions not to be met to dispense the Court from having to rule on the others. Furthermore, Judge Abraham finds it regrettable that the Court's reasoning on this question does not make it sufficiently clear that, in the present case, the Court had no choice but to find that it has prima facie jurisdiction, as it did in its Order on the requests submitted by Qatar in the same case, due to the requirement of equal treatment of the Parties.

As regards the reasons for rejecting the first two measures requested, Judge Abraham considers that the Court appears to have adopted too restrictive a definition of the purpose of provisional measures proceedings, limiting the measures that can be ordered to those aimed at protecting the parties' rights under the substantive provisions of the legal instrument forming the basis of jurisdiction over the merits of the case. In Judge Abraham's opinion, the Court would thus appear to unduly exclude measures aimed at protecting each party's procedural rights during the judicial process. According to Judge Abraham, the first two measures requested had to be rejected not, as the Court found, because they did not aim to protect a plausible right of the United Arab Emirates under CERD, but because the procedural rights at issue in the present case are not exposed to any risk of irreparable harm.

Separate opinion of Judge Cançado Trindade

1. In his separate opinion, composed of nine parts, Judge Cançado Trindade begins by pointing out that in the handling of the present case of the Application of the CERD Convention (Qatar versus United Arab Emirates — UAE), the International Court of Justice (ICJ) has faced an unfortunate sequence with the lodging with it of the present Request; in his perception, attention is to be kept on the importance of the provisional measures of protection indicated in the ICJ's previous Order of 23.07.2018, which remain in force, and are to be complied with.

2. The concern, in his view, is to remain in respect of the safeguard of human rights under the CERD Convention. The present Request has not invoked such rights. Judge Cançado Trindade adds that, as he attributes great importance to some related issues in the cas d'espèce, that in his perception underlie the present decision of the ICJ but are left out of the Court's reasoning, he feels obliged to leave on the records, in the present separate opinion, the identification of such issues and the foundations of his own personal position thereon.

3. Those issues are: (a) provisional measures of protection already ordered to secure respect for some human rights safeguarded under the CERD Convention; (b) the problem of the absence of link in the present Request; (c) the problem of its inconsistencies as to the CERD Convention and as to the CERD Committee; (d) relevance and persistence of provisional measures of protection of persons in continuing situations of vulnerability; (e) the longstanding importance of the fundamental principle of equality and non-discrimination; and (f) recapitulation of the key points that he sustains in the present separate opinion.

4. To start with, he recalls that the provisional measures of protection already ordered by the ICJ on 23.07.2018 remain in force, so as to secure the safeguard of the rights protected under Articles 2, 4, 5, 6 and 7 of the CERD Convention. This was duly requested by Qatar in its Request, as acknowledged by the ICJ's Order of 23.07.2018. Contrariwise, the UAE, in its subsequent Request, does not invoke rights under Articles 2, 4, 5, 6 and 7, protected by the CERD Convention; it simply alleges a violation of the compromissory clause (Article 22) of the CERD Convention.

5. In sequence, Judge Cançado Trindade observes that the present Request of the UAE does not establish the existence of a link between the rights whose protection is sought in the cas d'espèce under the CERD Convention and the provisional measures requested by the UAE. Furthermore, Judge Cançado Trindade adds that the arguments contained in the present Request of provisional measures disclose certain inconsistencies, which pertain to the rights (under the CERD Convention) to be protected, as well as to proceedings before the CERD Committee (para. 11).

6. In respect of the CERD Convention, it appears inconsistent to request the ICJ — as the UAE does — to order provisional measures by extending its prima facie jurisdiction and, at the same time, to object to its jurisdiction ratione materiae (para. 12). Moreover, the present Request does not address the safeguard of the human rights set forth in the CERD Convention, thus appearing to fall outside the scope of the CERD Convention.

7. The UAE incurs into inconsistencies arguing first that Qatar should have exhausted the CERD Committee procedure before seising the ICJ, and then also arguing that the ICJ should order Qatar to withdraw its submission before the CERD Committee and put an end to it (paras. 14-15). The UAE has thus raised contradictory arguments in respect of Qatar's Request of provisional measures in 2018, and in respect of its own present Request in 2019. The ICJ has clarified that it was not necessary to incur here into consideration of electa una via or lis pendens (paras. 16-18).

8. Judge Cançado Trindade then dwells upon the relevance and persistence in the cas d'espèce of provisional measures of protection in continuing situations (part V), recalling the earlier reflections he presented to the ICJ, in this respect, e.g. in his previous separate opinion in the present case of the Application of the CERD Convention (Qatar versus UAE, Order of 23.07.2018); in his dissenting opinion in the case concerning the Obligation to Prosecute or Extradite (Belgium versus Senegal, Order of 28.05.2009); in his subsequent separate opinion in the same case of the Obligation to Prosecute or Extradite (Judgment of 20.07.2012); in his dissenting opinions in the case on Jurisdictional Immunities of the State (Germany versus Italy, Order of 06.07.2010, and Judgment of 03.02.2012); in his separate opinions in the case of A.S. Diallo (Guinea versus D.R. Congo, Judgments of 30.11.2010, and of 19.06.2012); in his dissenting opinion in the case of the Application of the Convention against Genocide (Croatia versus Serbia, Judgment of 03.02.2015) (paras. 19-25).

9. Judge Cançado Trindade then refers to some of his own considerations developed in his aforementioned dissenting and separate opinions, among which his ponderation that

“a continuing situation affecting or in breach of human rights has had an incidence at distinct stages of the proceedings before the ICJ, namely, in provisional measures (like in the present case of the Application of the CERD Convention, twice already), as well as in counter-claims, merits, and reparations” (para. 26).

10. Judge Cançado Trindade proceeds in underlining another related point (part VI), namely:

“A continuing situation affecting human rights under the CERD Convention — duly stressed by Qatar in its own Request which led to the ICJ's Order of 23.07.2018 — leads to the continuing vulnerability of victimized human beings, or potential victims. Under the CERD Convention and other human rights treaties, attention is focused on human beings affected, — not on their States, nor on strictly inter-State relations. (...)

Hence the provisional measures of protection which were ordered by the ICJ last 23.07.2018, which remain in force, so as to safeguard some of the rights protected under the CERD Convention. The present Request by the UAE, — unlike the previous Request by Qatar, — does not refer to those rights. The question of human vulnerability counts on the attention of both contending parties in the present proceedings, but in distinct factual contexts addressed by the UAE and Qatar.

Qatar keeps on invoking the protection of rights under the CERD Convention. But, in the case of the position of the UAE, it does not relate vulnerability to the rights safeguarded under the CERD Convention. The UAE's present Request cannot thus be dealt with by the ICJ in the same way as the previous Request by Qatar. Hence the distinct decisions of the Court as to one request and the other. The important point is that the provisional measures of protection indicated in the ICJ's Order of last 23.07.2018 remain in force, to the benefit of human beings protected under the CERD

Convention in respect of some rights (under Articles 2, 4, 5, 6 and 7)” (paras. 27 and 29-30).

11. Judge Cançado Trindade then moves his attention to the longstanding importance of the fundamental principle of equality and non-discrimination (part VII), which — he warns — “has received much more attention in the proceedings pertaining to the previous Order of the ICJ (of 23.07.2018, as to Qatar’s Request), than in the current proceedings (as to the UAE’s Request)” (para. 32). He further points out that the CERD Committee, in its practice, has been particularly attentive to the prohibition of discriminatory measures against members of vulnerable groups (such as, e.g. migrants).

12. This can be said also — he adds — of the practice of other Committees under U.N. human rights Conventions (e.g. the Human Rights Committee; the Committee on the Elimination of Discrimination against Women (CEDAW); the Committee against Torture (CAT), among others). He further recalls that, in cases pertaining to the protection of human rights, the ICJ has been attentive to the work and decisions of such U.N. Committees (paras. 33-34).

13. Judge Cançado Trindade adds that “the idea of human equality, underlying the conception of the unity of the human kind, has marked its presence since the historical origins of the law of nations up to the present” (para. 36). And he continues:

“In recent years, the principle of equality and non-discrimination, and the prohibition of arbitrariness, have also marked presence in international case-law, including that of the ICJ (as I have pointed out, e.g., in my Separate Opinion in the ICJ’s Judgments on the case of A.S. Diallo, merits, 2010, and reparations, 2012 [Guinea versus D.R. Congo]; in my Separate Opinion in the ICJ’s Advisory Opinion on the Declaration of Independence of Kosovo, 2010; in my Dissenting Opinion in the case of the Application of the CERD Convention, 2011 [Georgia versus Russian Federation]; in my Separate Opinion in the ICJ’s Advisory Opinion on Judgment of the ILO Administrative Tribunal on a Complaint against IFAD, 2012; in my Dissenting Opinion in the case of the Application of the Convention against Genocide, 2015 [Croatia versus Serbia]; in my three Dissenting Opinions in the three cases of Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament, 2016 [Marshall Islands versus United Kingdom, India and Pakistan]; and in my Separate Opinion in the ICJ’s very recent Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, of 25.02.2019)” (para. 37).

14. He further recalls that this issue has been properly addressed in the ICJ’s prior Order of last 23.07.2018 in the present case of the Application of the CERD Convention, to which he has devoted much attention in his separate opinion appended thereto, having warned, *inter alia*, that this is “one of the rare examples of international case-law preceding international legal doctrine, and requiring from it due and greater attention” (para. 38).

15. In the present case of the Application of the CERD Convention, — Judge Cançado Trindade points out, — in pursuance to Qatar’s Request, the ICJ indicated provisional measures of protection of some rights under the CERD Convention; but the present Request by the UAE, making no reference to rights protected under the CERD Convention, has not provided the ICJ the occasion to do the same. And he then adds that

“[i]n dismissing this request, the ICJ could have made it clearer that the provisional measures that it has already ordered (on 23.07.2018) remain in force, and are to be complied by the contending parties, to the benefit of human beings protected under the relevant provisions of the CERD Convention” (para. 39).

16. In the light of the basic principle of equality and non-discrimination, the rights protected under the CERD Convention “are endowed with a fundamental character, with all legal consequences ensuing therefrom”; Judge Cançado Trindade then finds it

“disheartening that, in its reasoning in the present Order, the ICJ once again indulges repeatedly into what it beholds as ‘plausible rights’ (paras. 17, 21, 24, 25 and 26). Fundamental rights protected under the CERD Convention cannot be regarded or labelled as ‘plausible’ or ‘implausible’: they are fundamental rights” (para. 40).

17. This is a point corresponding to the position which he has been sustaining for a long time within the ICJ, — as illustrated by the very recent examples of his separate opinion in the case of Jadhav (India versus Pakistan, Order of 18.05.2017); his separate opinion in the case of the Application of the International Convention for the Suppression of the Financing of Terrorism and of the U.N. Convention on the Elimination of All Forms of Racial Discrimination (Ukraine versus Russian Federation, Order of 19.04.2017); his separate opinion in the present case of Application of the CERD Convention (Order of 23.07.2018) (paras. 41-43). And Judge Cançado Trindade adds that

“[i]n effect, continuing human vulnerability has marked permanent presence in human history, drawing attention to the need of protection of vulnerable persons and groups. Awareness of human vulnerability can be clearly found, e.g., in ancient Greek tragedies, which remain so contemporary in our days. (...) In the XXIst. century, human vulnerability persists, and seems to increase” (para. 44).

18. In the epilogue of the present separate opinion (part IX), Judge Cançado Trindade clarifies that in this third recent case before the ICJ under the CERD Convention, the rights protected thereunder are the rights of human beings, and not rights of States.

19. The present Request by the UAE of provisional measures, dismissed by the ICJ, does not invoke any of the human rights protected under the CERD Convention. Such rights are already safeguarded under the provisional measures of protection (requested by Qatar) that have already been indicated by the ICJ in the cas d’espèce, in its previous Order of 23.07.2018, and remain in force. In rightly dismissing the present Request, the Court made references in the present Order (paras. 16-18, 25-26 and 29) to its previous Order of 23.07.2018. Yet, in Judge Cançado Trindade’s understanding, the ICJ

“could have gone further beyond that, in expressly stressing the maintenance of the provisional measures of protection that it had previously ordered, to be duly complied with, given the importance of the human rights safeguarded under the CERD Convention” (para. 46).

20. In sustaining once again his humanist outlook, Judge Cançado Trindade proceeds, last but not least, to a recapitulation of the main points he makes in the present separate opinion, and the foundations of his own position, on provisional measures of protection, under a human rights treaty like the CERD Convention. He stresses the importance of the existence, in the cas d’espèce,

of a continuing situation affecting some human rights under the CERD Convention, bringing to the fore the continuing vulnerability of the affected human beings, or potential victims, and underlining the relevance of the provisional measures of protection in force since the ICJ's Order of 23.07.2018.

21. He concludes that the fundamental principle of equality and non-discrimination, and the prohibition of arbitrariness, lying in the foundations of the CERD Convention itself, require particular attention. He reiterates that such attention "is already present at normative and jurisprudential levels, but it remains still insufficiently examined by the international legal doctrine, which should become more attentive and devoted to the matter" (para. 50). The provisional measures of protection indicated by the ICJ's Order of 23.07.2018, — he reiterates, — "remain in force and are to be duly complied with" (para. 50).

Declaration of Judge Salam

Judge Salam voted in favour of the operative clause of the present Order rejecting the requested measures, in line with the position expressed in his dissenting opinion appended to the Court's Order of 23 July 2018 indicating provisional measures in the present case, where he took the view that the Court lacks jurisdiction in this case. However, he joins the Court in emphasizing the need for the Parties not to aggravate the present dispute.

Dissenting opinion of Judge ad hoc Cot

1. Judge ad hoc Cot voted against the operative part of the Order. In his opinion, the Court should have upheld at least the first provisional measure requested by the United Arab Emirates.

2. Judge ad hoc Cot considers that, in light of the doctrine of lis pendens, the procedural rights asserted by the United Arab Emirates are at least plausible under the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter "CERD"). In his view, the provisions of CERD, in particular Article 22, allow an application of lis pendens. He further considers that an adaptive approach should be taken to the doctrine of lis pendens, so that it may also be applied to issues of concurrency between judicial and quasi-judicial bodies. According to Judge ad hoc Cot, such an approach is particularly important when interpreting conventional provisions such as Article 22 of CERD, which provides for multiple methods of dispute settlement, but is rather ambiguous as to how they interrelate.

3. Judge ad hoc Cot believes that one possible interpretation of Article 22 of CERD is that the dispute resolution mechanism provided for by the Convention should be exhausted before the case is brought before the Court. In his view, if a treaty provides for several methods of dispute settlement to be followed in a certain order, the parties to a dispute concerning that treaty have the procedural right to expect that order to be respected. In Judge ad hoc Cot's opinion, it follows that, under Article 22, the parties to a dispute concerning CERD may legitimately expect that the dispute cannot be pending simultaneously before the Court and the Committee on the Elimination of Racial Discrimination. He points out that the Order made by the Court today does not preclude that this interpretation of Article 22 is at least plausible.

4. As regards the measure to be adopted to address the lis pendens situation in this case appropriately, Judge ad hoc Cot considers that an immediate withdrawal of Qatar's Communication to the Committee on the Elimination of Racial Discrimination was not the only way to resolve the situation. In his opinion, if the measure requested by the United Arab Emirates risked having a disproportionate effect on Qatar, the Court could have made an order providing for the suspension of the proceedings before the Committee on the Elimination of Racial Discrimination, by directing

Qatar to take all measures at its disposal to ensure that the proceedings before the Committee are suspended pending the final decision in this case. In the alternative, Judge ad hoc Cot believes that the Court could have exercised its power under Article 75, paragraph 1, of the Rules of Court to conclude, for example, that it should suspend the present proceedings until the Committee on the Elimination of Racial Discrimination has issued its concluding observations on the Communication submitted by Qatar.
