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**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2019

Public sitting

held on Tuesday 7 May 2019, at 10 a.m., at the Peace Palace,

President Yusuf presiding,

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

VERBATIM RECORD

ANNÉE 2019

Audience publique

tenue le mardi 7 mai 2019, à 10 heures, au Palais de la Paix,

sous la présidence de M. Yusuf, président,

*en l'affaire relative à l'Application de la convention internationale sur l'élimination
de toutes les formes de discrimination raciale
(Qatar c. Emirats arabes unis)*

COMPTE RENDU

Present: President Yusuf
 Vice-President Xue
 Judges Tomka
 Abraham
 Bennouna
 Cançado Trindade
 Donoghue
 Gaja
 Bhandari
 Robinson
 Crawford
 Gevorgian
 Salam
 Iwasawa
Judges *ad hoc* Cot
 Daudet

 Registrar Couvreur

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

The Government of the State of Qatar is represented by:

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as Agent;

Mr. Vaughan Lowe, QC, member of the English Bar, Essex Court Chambers, Emeritus Professor of International Law, Oxford University, member of the Institut de droit international,

Ms Catherine Amirfar, Debevoise & Plimpton LLP, member of the Bars of the United States Supreme Court and New York,

Mr. Lawrence H. Martin, Foley Hoag LLP, member of the Bars of the District of Columbia and Massachusetts,

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

Mr. Donald Francis Donovan, Debevoise & Plimpton LLP, member of the Bars of the United States Supreme Court and New York,

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Mr. Ahmad Al-Mana, Ministry of Foreign Affairs,

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

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

Mr. Khalid Abdulaziz Al-Khulaifi, Ministry of Foreign Affairs,

Ms Ream Ahmad Al-Thani, Ministry of Foreign Affairs,

Ms Hissa Sultan Aldosari, Ministry of Foreign Affairs,

Ms Hanadi Al Shafei, Ministry of Foreign Affairs,

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Mr. Rashed Al-Naemi, Embassy of the State of Qatar in the Netherlands,

Mr. Omar Boujnane, Embassy of the State of Qatar in the Netherlands,

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M. Pierre Klein, professeur de droit international à l'Université libre de Bruxelles,

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

M. Khalid Abdulaziz Al-Khulaifi, ministère des affaires étrangères,

Mme Ream Ahmad Al-Thani, ministère des affaires étrangères,

Mme Hissa Sultan Aldosari, ministère des affaires étrangères,

Mme Hanadi Al Shafei, ministère des affaires étrangères,

M. Ali Al-Hababi, ambassade de l'Etat du Qatar aux Pays-Bas,

M. Rashed Al-Naemi, ambassade de l'Etat du Qatar aux Pays-Bas,

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M. Dan Sarooshi, QC, membre du barreau d'Angleterre, cabinet Essex Court Chambers, professeur de droit international public à l'Université d'Oxford, chargé de recherche principal au Queen's College, Oxford,

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M. Tisungane Makato, membre du barreau du Malawi, cabinet Volterra Fietta,

comme conseils adjoints.

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

For reasons duly made known to me, Judge Sebutinde is unable to sit with us during these hearings.

Since the Court does not include upon the Bench a judge of the nationality of either of the Parties, both Parties have already availed themselves of the right, under Article 31, paragraph 3, of the Statute, to choose a judge *ad hoc*. Mr. Yves Daudet was chosen by Qatar, and Mr. Jean-Pierre Cot, by the United Arab Emirates. They were both installed as judges *ad hoc* on 27 June 2018, during the phase of the present case that was devoted to the Request for the indication of provisional measures submitted by Qatar.

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The proceedings in the present case were instituted on 11 June 2018 by the filing in the Registry of the Court of an Application by the State of Qatar against the United Arab Emirates with regard to alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965. I shall refer to this Convention as “CERD”. On the same date, Qatar also submitted a Request for the indication of provisional measures. To found the jurisdiction of the Court, Qatar invoked Article 36, paragraph 1, of the Statute of the Court and Article 22 of CERD.

By an Order dated 23 July 2018, the Court indicated certain provisional measures addressed to the United Arab Emirates. In addition, both Parties were directed to refrain from any action which might aggravate or extend the dispute before the Court.

On 22 March 2019, the Government of the United Arab Emirates, relying on Article 41 of the Statute of the Court and Articles 73 to 75 of the Rules of Court, submitted to the Court a

Request for the indication of provisional measures in order to preserve “the UAE’s procedural rights in this case”. They also requested that Qatar be prevented from “further aggravating or extending the dispute between the Parties pending a final decision in this case”.

I shall now ask the Registrar to read out the passage from the Request specifying the provisional measures which the Government of the United Arab Emirates is asking the Court to indicate.

The REGISTRAR: The United Arab Emirates requests the Court to 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.”

The PRESIDENT: Thank you. Immediately after the Request for the indication of provisional measures was filed, the Deputy-Registrar, in accordance with Article 73, paragraph 2, of the Rules of Court, transmitted an original copy thereof to the Government of the State of Qatar. He also notified the Secretary-General of the United Nations.

According to Article 74 of the Rules of Court, a request for the indication of provisional measures shall have priority over all other cases. Consequently, the Parties were informed by the Court, by letters dated 28 March 2019, that the date for the opening of the oral proceedings contemplated in Article 74, paragraph 3, of the Rules of Court, during which they could present their observations on the Request for the indication of provisional measures, had been set on 7 May 2019, at 10 a.m.

I note the presence before the Court of the Agents and counsel of the two Parties. The Court will hear the United Arab Emirates, which has submitted the Request for the indication of

provisional measures, this morning until 1 p.m. It will hear Qatar tomorrow, Wednesday 8 May 2019, at 10 a.m. For the purposes of this round of oral observations, each of the Parties will have available to it a full three-hour sitting. The Parties will then have the possibility to reply: the United Arab Emirates will have the floor again on Thursday 9 May 2019 at 10 a.m., and Qatar will take the floor in turn on Thursday 9 May at 4.30 p.m. Each of the Parties will have a maximum time of one and half hours in which to present a reply.

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

Before giving the floor to Her Excellency Dr. Hissa Abdullah Ahmed Al-Otaiba, Agent of the United Arab Emirates, I wish to draw the attention of the Parties to Practice Direction XI which states that:

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

I now call upon Dr. Hissa Abdullah Ahmed Al-Otaiba. Your Excellency, you have the floor.

Ms AL-OTAIBA:

I. INTRODUCTORY STATEMENT

1. Mr. President and Honourable Members of the Court, my name is Hissa Abdullah Ahmed Al-Otaiba. I am the Ambassador of the United Arab Emirates to the Kingdom of the Netherlands. It is a great honour to appear before you today as Agent of the United Arab Emirates. My country seeks the protection of the Court on an urgent basis, so as to avoid irreparable prejudice to its rights and to prevent Qatar from further aggravating the Parties' dispute.

2. Qatar's claims in this case do not reflect the real dispute between the Parties. The United Arab Emirates has committed no racial discrimination. Qataris and Emiratis are not different races. They are neighbours who share many things, including their racial heritage. As a matter of fact, Qatar agrees with this. In June 2018, the Agent of Qatar rightly noted in this courtroom that “[f]or decades, Qataris and Emiratis have studied and worked together, prayed

together, and married into each other's families"¹. There is obviously a difference between being citizens of different countries and being members of different races.

3. For decades, Qatari citizens have lived in peace inside the United Arab Emirates. And they continue to do so today. They have never been discriminated against on the basis of their race, their colour, their descent or their national or ethnic origin. My country has one of the highest rates of immigration in the world. We are an inclusive country, with inhabitants who come from all over the world.

4. The real dispute between the Parties does not relate to interpretations of the International Convention on the Elimination of All Forms of Racial Discrimination. The real dispute between the Parties concerns the decision of the United Arab Emirates in 2017 to terminate its diplomatic relations with Qatar. The United Arab Emirates took this step as a result of Qatar's long-standing support of terrorist groups and the harm this causes to the United Arab Emirates². Qatar has fabricated a dispute that seeks to invoke the interpretation of the CERD Convention to disguise its attempt to force the United Arab Emirates to return to the pre-existing diplomatic status quo.

5. The citizens of Qatar and the United Arab Emirates share a common cultural and social background. Any allegation of racial discrimination is untenable. A careful examination of the evidence confirms that Qatar is not genuinely seeking to protect its citizens from any purported racial discrimination. Qatar is misusing the CERD Convention for its political objectives. Qatar is seeking the help of the Court to force the United Arab Emirates to restore the Parties' previous diplomatic relations without Qatar first ending its support of terrorism.

6. For many years, the Government of Qatar, the Arabic language channels of Al Jazeera and other Qatari media outlets have supported terrorist groups around the world³. These groups have targeted the United Arab Emirates and many other States. They have caused unspeakable suffering to vulnerable people. These terrorist groups are responsible for the killing, rape, torture and forced displacement of countless innocent civilians. And for many years, Qatar has financed and supported them.

¹ CR 2018/12, p. 15, para. 2.

² See Preliminary Objections of the United Arab Emirates ("POUAE"), 29 Apr. 2019, Sec. II.A; Request for the indication of provisional measures submitted by the United Arab Emirates ("RPMUAE"), 22 Mar. 2019, Sec. II.

³ See e.g. POUAE, para. 20.

7. From 2011 to 2013, the threats posed by terrorist groups reached a critical level in the Middle East and North Africa region. This demanded a collective regional response. As a result, the United Arab Emirates, Qatar, Bahrain, Kuwait, Oman and Saudi Arabia concluded a series of international agreements known as the “Riyadh Agreements”⁴. You can find these agreements at tabs 1 to 3 of your folders.

8. In these treaties, Qatar promises not to support “any of the organizations, groups or individuals that threaten the security . . . of the [GCC] states”⁵. In addition, Qatar expressly promises not to support any type of “antagonistic media”⁶.

9. The Riyadh Agreements expressly refer to Qatar’s State-owned and controlled news network Al Jazeera⁷. Qatar also agreed “[n]ot to support . . . groups in Yemen, Syria or any destabilized area, which pose a threat to the security and stability of GCC Countries”⁸.

10. Despite these promises, Qatar has continued to support Al-Qaeda, the Al-Nusra Front, ISIS, the Muslim Brotherhood and other terrorist groups operating in Syria, Libya, Egypt and other States⁹.

11. It is notorious and well documented that Qatar has provided these groups with financial support¹⁰. Qatar has refused to extradite or to prosecute terrorists residing in its territory¹¹. And Qatar has continued to incite hatred and extremism through Al Jazeera and other media outlets that it owns, controls or funds¹². You can find examples of all of this at tabs 4 to 11¹³.

⁴ First Riyadh Agreement, 23 and 24 Nov. 2013, United Nations Registration Number 55378 (“First Riyadh Agreement”), RPMUAE, Ann. 2; Mechanism Implementing the Riyadh Agreement, 17 Apr. 2014, United Nations Registration Number 55378 (“Mechanism Implementing the Riyadh Agreement”), RPMUAE, Ann. 3; Supplementary Riyadh Agreement, 16 Nov. 2014, United Nations Registration Number 55378 (“Supplementary Riyadh Agreement”), RPMUAE, Ann. 4.

⁵ First Riyadh Agreement, Art. 2, RPMUAE, Ann. 2 (quotes translated from Arabic original).

⁶ First Riyadh Agreement, Art. 1, RPMUAE, Ann. 2 (quotes translated from Arabic original).

⁷ See Supplementary Riyadh Agreement, Art. 3 (d), RPMUAE, Ann. 4.

⁸ Mechanism Implementing the Riyadh Agreement, Art. 2 (c), RPMUAE, Ann. 3 (quote translated from Arabic original). See also First Riyadh Agreement, Art. 3, RPMUAE, Ann. 2.

⁹ See POUAE, Sec. II.A.2.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

12. Because of this, the United Arab Emirates and many other States terminated diplomatic relations with Qatar¹⁴. The UAE then undertook a series of lawful measures against the Government of Qatar to induce Qatar to comply with its legal obligations. Regrettably, Qatar has chosen not to stop its unlawful activities.

13. Instead, in an attempt to divert attention from its own misconduct, Qatar initiated two abusive parallel legal proceedings against the UAE under the CERD Convention. And it is trying even now to initiate a third. Each proceeding is based upon the same facts, the same instrument and concerns the same Parties. Each of the proceedings is meritless and vexatious. Qatar's argument rests entirely on the factually inaccurate claim that the United Arab Emirates has expelled all citizens of Qatar and banned them from entering the United Arab Emirates. However, there has been no travel ban or mass expulsion of Qatari citizens from the United Arab Emirates and there will not be.

14. Qatar's claims are false. Qatari citizens continue to live in the United Arab Emirates in large numbers. They are able to travel to and from the United Arab Emirates and they continue to do so in large numbers. They remain studying in UAE universities. And Qatari-owned businesses and properties in the United Arab Emirates remain in operation and under the control of their owners.

15. In the past, Qatari citizens could enter the United Arab Emirates without prior permission. After the termination of diplomatic relations between the Parties, the UAE required Qatari citizens to obtain prior permission before they can enter the UAE. There is nothing controversial about that. All countries in every part of the world require citizens of certain other

¹³ See e.g. C. Coughlin, "White House calls on Qatar to stop funding pro-Iranian militias", *The Telegraph*, 12 May 2018, POUAE, Vol. 3, Ann. 71, pp. 435-438; E. Solomon, "The \$1bn hostage deal that enraged Qatar's Gulf rivals", *The Financial Times*, 5 June 2017, Vol. 3, Ann. 77, pp. 477-481; United Nations Security Council, ISIL (Da'esh) and Al-Qaida Sanctions Committee, Narrative Summaries of Reasons for Listing Khalifa Muhammad Turki Al-Subaiy (QDi.253), 3 Feb. 2016, POUAE, Vol. 2, Ann. 9, pp. 63-65; United Nations Security Council, Al-Qaida Sanctions Committee, Narrative Summaries of Reasons for Listing Abd al-Latif bin Abdallah Salih Muhammad al-Kawari (QDi.380), 21 Sept. 2015, POUAE, Vol. 2, Ann. 10, pp. 67-68; United Nations Security Council, Al-Qaida Sanctions Committee, Narrative Summaries of Reasons for Listing Sa'd bin Sa'd Muhammad Shariyan al-Ka'bi (QDi.382), 21 Sept. 2015, POUAE, Vol. 2, Ann. 11, pp. 69-70; A. Gennarelli, "Egypt's Request for Qatar's Extradition of Sheikh Yusuf Al-Qaradawi", *Center for Security Policy*, 27 May 2015, POUAE, Vol. 3, Ann. 67, pp. 419-421; US Department of Treasury, "Remarks of Under Secretary for Terrorism and Financial Intelligence David Cohen before the Center for a New American Security on 'Confronting New Threats in Terrorist Financing'", 4 Mar. 2014, POUAE, Vol. 4, Ann. 154, pp. 637-418, pp. 640-642; J. Warrick and T. Roof, "Islamic charity officials gave millions to al-Qaeda, U.S. says", *Washington Post*, 22 Dec. 2013, POUAE, Vol. 3, Ann. 66, pp. 417-418.

¹⁴ See RPMUAE, fn. 10.

countries to obtain prior permission to enter their territory. It is a basic and legitimate exercise of sovereignty¹⁵.

16. The United Arab Emirates sought to minimize any possible inconvenience for Qatari citizens. The United Arab Emirates set up a telephone hotline¹⁶ and access on its official visa application website to help Qatari citizens apply for a permit to return to the United Arab Emirates¹⁷. During the months that followed the implementation of these procedures, thousands of Qatari citizens continued to enter and exit the United Arab Emirates¹⁸. Despite the fact that it knows this to be the truth, Qatar continues to spread false accusations against the United Arab Emirates.

17. On 23 July 2018, the Court ordered both Parties to refrain from any action which might aggravate or extend the dispute or make it more difficult to resolve¹⁹. As counsel for the United Arab Emirates will explain today, in violation of this Order, Qatar has continued to aggravate the dispute and to make it more difficult to resolve. Qatar is causing prejudice to the rights of the United Arab Emirates in multiple and significant ways.

18. Accordingly, the UAE requests provisional measures from the Court. If this Request is not granted urgently, the rights of the UAE will be irreparably harmed and the Parties' dispute might become impossible to resolve.

19. The UAE respectfully maintains all of *its arguments* on the jurisdiction. Nonetheless, the UAE has accepted the Court's findings in its Order of July 2018 that it has prima facie jurisdiction in this case sufficient to indicate provisional measures. My country only ~~seeks and~~ asks that the Court protects the rights of the United Arab Emirates with equal consideration.

20. I now ask the Court to call upon our counsel, Professor Robert G. Volterra, to address the legal standard for provisional measures.

¹⁵ See e.g., United Nations, Office of the High Commissioner for Human Rights, *Migration, Human Rights and Governance: Handbook for Parliamentarians No. 24*, 2015, pp. 19-20.

¹⁶ See UAE Ministry of Foreign Affairs and International Cooperation, Announcement Regarding Directive for Hotline, 11 June 2017, Documents submitted by the UAE on 25 June 2018 in the context of Qatar's request for provisional measures, exhibit 2.

¹⁷ See Federal Authority for Identity & Citizenship Website, available at: <https://echannels.moi.gov.ae>.

¹⁸ See RPMUAE, Sect. II.

¹⁹ *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) ("Order of 23 July 2018")*, para. 41.

21. I thank you for the opportunity to address you today.

The PRESIDENT: I thank the Agent of the United Arab Emirates, Ambassador Al-Otaiba and I now give the floor to Professor Volterra. You have the floor.

Mr. VOLTERRA:

II. THE LEGAL STANDARD FOR PROVISIONAL MEASURES AND QATAR'S FABRICATION OF EVIDENCE

1. Mr. President, Honourable Members of the Court, it is an honour to appear again before this august Court.

2. I will now make two submissions on behalf of the United Arab Emirates. My first submission concerns the legal standard to be applied by the Court in evaluating the UAE's Request for the indication of provisional measures. My second submission relates to aspects of Qatar's conduct before this Court. Following my submissions, Professor Michael Reisman will address the UAE's first provisional measure request, regarding Qatar's abusive parallel proceedings. Professor Dan Sarooshi, QC, will then address the UAE's second provisional measure request, which concerns Qatar's sabotage of the measures taken by the UAE Government to assist Qatari citizens. Dr. Maria Fogdestam-Agius will address the UAE's third provisional measure request, related to Qatar's dissemination of false accusations regarding the UAE. I will then have the honour to address the Court once more, to make the UAE's submissions on its request that Qatar be ordered to refrain from any action which might aggravate or extend the dispute. I will then close the UAE's opening submissions by delivering brief concluding remarks.

A. The legal standard for provisional measures

1. The power to indicate provisional measures in Article 41 (1) protects both Parties

3. With the Court's leave, I now turn to my first submission. The Court's power to indicate provisional measures is found in Article 41 (1) of the Statute of the International Court of Justice. Article 41 (1) confirms that provisional measures protect all parties in a proceeding and not only the applicant. It states: "The Court shall have 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.”

4. The meaning of the words, “either party”, could not be clearer. They mean, in this case, that the UAE is just as entitled to the protection of the Court as is Qatar.

5. The Court has previously identified two forms of provisional measures: one, those that protect rights *pendente lite*²⁰; and, two, those that prevent the aggravation or extension of the dispute or actions that make the dispute more difficult to resolve²¹. The UAE requests the protection of the Court in relation to both forms of provisional measures.

2. The Court has considered four factors when assessing whether to indicate provisional measures to protect rights *pendente lite*

6. I therefore turn to the first form of provisional measures, which protects rights *pendente lite*. As identified in the Court’s July 2018 Order²², four factors determine whether the Court will indicate this form of provisional measures. These four factors are:

- (i) that the Court has prima facie jurisdiction;
- (ii) that the rights claimed by the requesting State are plausible;
- (iii) that there is a sufficient connection between those rights and the merits of the case; and
- (iv) that there is a risk of irreparable prejudice and an element of urgency.

7. The first of these factors, that the Court has prima facie jurisdiction, has already been determined in this case. In its July 2018 Order, a majority of this Court accepted Qatar’s arguments that prima facie jurisdiction existed. The Court confirmed that this holding was without prejudice to the Court’s final determination on jurisdiction²³.

²⁰ See e.g. *Order of 23 July 2018*, para. 43; *Aegean Sea Continental Shelf (Greece v Turkey)*, *Interim Protection, Order of 11 September 1976*, *I.C.J. Reports 1976*, separate opinion of President Jiménez de Aréchaga, p. 17.

²¹ See *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand)*, *Provisional Measures, Order of 18 July 2011*, *I.C.J. Reports 2011 (II)*, p. 552, para. 59.

²² See *Order of 23 July 2018*, paras. 14, 43, 44 and 60.

²³ See *Order of 23 July 2018*, paras. 27 and 41.

8. I therefore turn to the second factor: the rights claimed by the requesting State must be plausible²⁴. In its July 2018 Order, the Court defined plausible rights as rights, “which may subsequently be adjudged . . . to belong to either party”²⁵.

9. The word “may” is significant. The Court does not make a final determination of whether the claimed right does or does not exist on the merits²⁶. The same standard must be applied to the UAE’s present Request as was applied to Qatar’s Request. In the present case, this means that the UAE need only establish that the rights which it claims plausibly exist. Of course, the rights claimed by the UAE undoubtedly *do* exist. But all that is legally required is that they *plausibly* exist.

10. I turn now to the third factor: the plausible rights must have a “sufficient connection with the merits of the case”²⁷. The claimed right can arise out of the right of a party to have a fair adjudication of the dispute. Thus, all that is required is that the right is involved in, or may be affected by, the Court’s determination of the dispute.

11. This is also the meaning and legal effect of the Court’s 23 January 2007 Order in the *Pulp Mills* case. In that proceeding, Uruguay, as a respondent, sought provisional measures to protect its rights to free transport and commerce²⁸. The applicant on the merits, Argentina, objected that those rights could not be protected by this Court because they were not actually and directly granted by the Statute of the River Uruguay, which was the basis for the Court’s prima facie jurisdiction²⁹.

12. The Court did not credit this aspect of Argentina’s objections. The Court noted that “the rights of the respondent are not dependent solely upon the way in which the applicant formulates its

²⁴ See *Order of 23 July 2018*, para. 43.

²⁵ *Order of 23 July 2018*, para. 43. See also *Application of the International Convention on the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 126, para. 63.

²⁶ See *Order of 23 July 2018*, paras. 53 and 54.

²⁷ *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Provisional Measures, Order of 23 January 2007, I.C.J. Reports 2007 (I)*, p. 11, para. 30.

²⁸ *Ibid.*, p. 9, para. 21.

²⁹ *Ibid.*, pp. 8-9, paras. 20 and 21.

application”³⁰. In that case, the Court further noted that it could both protect Uruguay’s rights under the Statute of the River Uruguay and that, separately, Uruguay’s:

“right to have the merits of the present case resolved by the Court under Article 60 of the 1975 Statute also has a connection with the subject of the proceedings on the merits initiated by Argentina and may in principle be protected by the indication of provisional measures”³¹.

13. The Court thus confirmed that Uruguay’s procedural and other rights could be protected, even if they were not substantive rights expressly stated in the Statute of the River Uruguay³².

14. It would be a grievously unjust disadvantage to respondents in cases before the Court if the authority to indicate provisional measures was limited exclusively to the rights pled and relied on by applicants. Such an outcome would be anathema to basic concepts of procedural and substantive justice.

15. In the present case, this means that rights that are specifically and directly protected by the CERD Convention are not the only rights that can have a connection with the subject of the proceedings. All that the UAE must do to fulfil this third factor is demonstrate that its rights may be affected by or involved in the Court’s determination of the dispute. My colleagues will subsequently make submissions which establish just that.

16. I therefore turn now to the fourth factor: there must be a risk of irreparable prejudice and an element of urgency.

17. In *Ukraine v. Russian Federation*, the Court stated that it would indicate provisional measures “only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights in dispute before the Court gives its final decision”³³.

18. In his separate opinion in the *Aegean Sea Continental Shelf* case, President Jiménez de Aréchaga correctly explained that the essential justification for provisional measures “is that the

³⁰ *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Provisional Measures, Order of 23 January 2007, I.C.J. Reports 2007 (I), p. 10, para. 28.*

³¹ *Ibid.*, p. 11, para. 29.

³² *Ibid.*, p. 11, para. 30.

³³ *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017, p. 136, para. 89.*

action of one party '*pendente lite*' causes or threatens a damage ~~[of one party and]~~ to the rights of the other"³⁴.

19. Although Qatar's submissions last year were misplaced in many respects, the UAE does agree with one of the submissions that it made on this question during the July 2018 hearing. Qatar submitted that "[t]he power to award provisional measures . . . has . . . a twofold purpose"³⁵. Qatar then identified those two purposes as to "preserve the rights in dispute" and, in addition, to "protect the value of this honourable Court's judicial functions more generally"³⁶. This includes the right to a fair and robust adjudication by this Court.

20. In this case, it means that the Court should indicate provisional measures to protect numerous rights of the UAE, including its right to a fair adjudication of this proceeding, its right not to be required to defend the same allegations in multiple *fora*, particularly when based on an abuse of process, and its right to implement the Court's provisional measures without interference. My co-counsel will make detailed submissions on these issues.

3. The Court has the power independently to indicate provisional measures in order to prevent the aggravation or extension of the dispute and to prevent actions that make it more difficult to resolve

21. Having finished my submissions on provisional measures that protect rights *pendente lite*, and with the Court's indulgence, I now turn to provisional measures that prevent the aggravation or extension of the dispute.

22. This Court confirmed in the *Temple of Preah Vihear* case that "the Court, independently of the parties' requests, also possesses the power to indicate provisional measures with a view to preventing the aggravation or extension of the dispute"³⁷. A similar statement is found in paragraph 41 of the March 1996 Order in the *Cameroon v. Nigeria* case³⁸.

³⁴ *Aegean Sea Continental Shelf (Greece v. Turkey)*, *Interim Protection, Order of 11 September 1976*, *I.C.J. Reports 1976*, separate opinion of President Jiménez de Aréchaga, p. 17.

³⁵ CR 2018/12, p. 51, para. 2 (Goldsmith).

³⁶ CR 2018/12, p. 51, para. 2 (Goldsmith).

³⁷ *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand)*, *Provisional Measures, Order of 18 July 2011*, *I.C.J. Reports 2011 (II)*, pp. 551-552, para. 59.

³⁸ See *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, *Provisional Measures, Order of 15 March 1996*, *I.C.J. Reports 1996 (I)*, pp. 22-23, para. 41, and *Order of 23 July 2018*, para. 76.

23. As my co-counsel will demonstrate, Qatar should therefore be prevented from aggravating this dispute including by continuing, as it has, to make false and misleading statements in public *fora* or by interfering with the means that the UAE has established to permit Qatari citizens to return to the UAE.

B. Qatar's fabrication of evidence

24. With the Court's permission, I now turn to the second topic on which I will make the UAE's submissions during this speech. This topic is Qatar's misconduct in this case, which bears striking similarities to its misconduct in the *Qatar v. Bahrain* case. To be precise, today, just as before, Qatar's agencies and instrumentalities are providing this Court and the public with fabricated evidence and false and misleading information.

25. As the Court may be pleased to recall, I had the honour to be counsel and advocate for Bahrain in its case against Qatar before this Court. I worked intensely to investigate and expose Qatar's submission as evidence to this Court, *of* no less than 82 forged documents. The parallels between aspects of Qatar's conduct in the present case and Qatar's prior misconduct are striking.

26. Qatar's 2018 Request for the indication of provisional measures, and its recently submitted Memorial in this present case, rely heavily on evidence that was purportedly gathered by Qatar's National Human Rights Committee, also known as Qatar's NHRC. In *Qatar v. Bahrain*, the 82 forged documents submitted to the Court by Qatar were purportedly gathered by Qatar's Amiri Diwan Archives — another national institution of Qatar.

27. There are good reasons not to rely on the veracity of documents produced by Qatar's NHRC any more than to rely on the veracity of the 82 forged documents that Qatar submitted to this Court from its Amiri Diwan Archives in the *Qatar v. Bahrain* case.

28. I respectfully invite the Court to turn to the folders at tab 12³⁹. There, at tab 12, you will see a press release issued by Qatar's NHRC. This press release issued by Qatar's NHRC dates 3 February 2018. In ~~*Qatar's press the*~~ release, Qatar's NHRC reported that a delegation of

³⁹ Qatar's National Human Rights Committee, "Parallel to the signing of an [sic] petition by 15 MPs addressed to the Prime Minister: The British parliamentary mission calls on Teresa Mai [sic] to urge the blockade countries to respond to dialogue with Qatar", 3 Feb. 2018, available at: <http://nhrc-qa.org/en/parallel-to-the-signing-of-an-petition-by-15-mps-addressed-to-the-prime-minister-the-british-parliamentary-mission-calls-on-teresa-mai-to-urge-the-blockade-countries-to-respond-to-dialogue-with-qatar/>.

15 parliamentarians from the United Kingdom Parliament had visited Qatar on what Qatar's NHRC called a fact-finding mission. Qatar's NHRC stated that this fact-finding mission was intended to investigate what Qatar refers to as the "blockade" of Qatar. In its press release, Qatar's NHRC also reported that this purportedly official delegation from the UK Parliament had issued a "report containing its conclusions" about the so-called blockade. This press release remains on the NHRC website today.

29. Mr. President, Members of the Court, Qatar's press release was not remotely true or accurate. A spokesperson for the House of Commons, the UK House of Commons, has confirmed that there was no official fact-finding mission to Qatar⁴⁰. Public records instead show that a charity paid to have some members of the UK Parliament visit Qatar⁴¹.

30. Now, I respectfully invite the Court to turn to tab 13 of your folder. This is slide 4 of the PowerPoint presentation. As I mentioned, Qatar proclaimed publicly that there is a report of this purportedly official UK parliamentary fact-finding mission⁴². However, what Qatar's NHRC alleges to be a report never was actually produced or planned or even existed. The Court can see at tab 13 of this folder that, when asked to comment on this alleged report, one of the individuals whom Qatar's NHRC alleges is one of its authors categorically denied its existence. The Court can see that he said, "I've not seen it or read it"⁴³. Another individual whom Qatar alleges was also an author of this supposed report said, "I signed no such report"⁴⁴.

⁴⁰ See A. Pukas, "British lawmakers deny link to Qatar 'report' on impact of boycott", *Arab News*, 22 Feb. 2018, available at: <http://www.arabnews.com/node/1252126/middle-east>; B. Flanagan, "UK Parliament calls out fake Qatari news reports about politicians' visit", *Arab News*, 20 Oct. 2017, available at: <http://www.arabnews.com/node/1180686/middle-east>.

⁴¹ See UK Parliament, "Register of Lords' Interests", Lords Ahmed, Hussain and Kilclooney, available at: <https://www.parliament.uk/documents/publications-records/House-of-Lords-Publications/Records-activities-and-membership/Register-of-Lords-Interests/Register140318.pdf>.

⁴² Qatar's National Human Rights Committee, "Parallel to the signing of an [sic] petition by 15 MPs addressed to the Prime Minister: The British parliamentary mission calls on Teresa Mai [sic] to urge the blockade countries to respond to dialogue with Qatar", 3 Feb. 2018, available at: <http://nhrc-qa.org/en/parallel-to-the-signing-of-an-petition-by-15-mps-addressed-to-the-prime-minister-the-british-parliamentary-mission-calls-on-teresa-mai-to-urge-the-blockade-countries-to-respond-to-dialogue-with-qatar/>.

⁴³ A. Pukas, "British lawmakers deny link to Qatar 'report' on impact of boycott", *Arab News*, 22 Feb. 2018, available at: <http://www.arabnews.com/node/1252126/middle-east>.

⁴⁴ A. Pukas, "British lawmakers deny link to Qatar 'report' on impact of boycott", *Arab News*, 22 Feb. 2018, available at: <http://www.arabnews.com/node/1252126/middle-east>.

31. I direct you again back to tab 12 of your folders, the previous tab, the press release you reviewed previously, and on the screen at slide 5⁴⁵. The same picture is also seen in tab 13. Now, I invite you to look at the top left-hand corner of that. To give an air of authenticity to its fraudulent press release, Qatar's NHRC fabricated a cover page or slide for the non-existent fact-finding mission's non-existent report. You can see that there. And I directed you to the top left-hand corner of the slide.

32. To make the fabricated cover page or slide of the fabricated, non-existent report appear authentic, Qatar's NHRC affixed an image of the UK Parliament's portcullis, or emblem, to that cover page. You can see the emblem circled at the top left-hand of the image of this slide. That is reminiscent of so many of the 82 forged documents that had been supposedly collected by Qatar's Amiri Diwan Archives and were submitted by Qatar to the Court in *Qatar v. Bahrain*.

33. The parallels between this and Qatar's prior misconduct before this Court are unmistakable. Qatar's NHRC affixing the UK Parliament's emblem to the cover of a falsified report of a falsified fact-finding mission reminds me in particular of one aspect of Qatar's 82 forged documents in the *Qatar v. Bahrain* case. In that case, Qatar had claimed that certain of the 82 forged documents which it had submitted to the Court as evidence were from the 19th century — *the 19th century*. Many of those *forged* documents had been stamped with what Qatar claimed was the seal of the Royal Court of Arms of the United Kingdom. I am sure many of the Judges will be familiar with this. It has the unicorn and the lion on it. And Qatar claimed that this was the seal of the Royal Court of Arms of the United Kingdom from the same historical time period as it alleged those documents to be — that is, from the 19th century. Qatar had claimed in its submissions to the Court that these documents had been stamped with this seal by British Government officials during the 19th century to show official British approval at the time — that is, during the 19th century — of various forged maps and other documents that Qatar had submitted to the Court to support its false narrative.

⁴⁵ See Qatar's National Human Rights Committee, "Parallel to the signing of an [sic] petition by 15 MPs addressed to the Prime Minister: The British parliamentary mission calls on Teresa Mai [sic] to urge the blockade countries to respond to dialogue with Qatar", 3 Feb. 2018, available at: <http://nhrc-qa.org/en/parallel-to-the-signing-of-an-petition-by-15-mps-addressed-to-the-prime-minister-the-british-parliamentary-mission-calls-on-teresa-mai-to-urge-the-blockade-countries-to-respond-to-dialogue-with-qatar/>.

34. I took photocopies of these documents that Qatar claimed had provenance from the 19th century to an institution in London called the College of Arms. The College of Arms has been the official authority in England on such things as coats of arms, crests, seals and so on since mediaeval times. I showed these Qatari documents with the UK seal on them to an official there and I told him that Qatar had submitted them to the Court as evidence, as 19th century documents. He started laughing, and so I asked him what was funny. He pointed to the UK seal stamped on the documents and told me that this version of the UK seal was very distinctive and very famous. He said it had been newly created for Queen Elizabeth II, following her coronation in the mid-20th century. The Qatari documents thus could not be genuine. They were plainly forgeries, and as the Members of this Court will be aware, Qatar ultimately had to abandon any reliance on its 82 forged documents.

35. In the present case, Qatar's NHRC likewise affixed an official emblem that did not genuinely belong there onto a fabricated cover page or slide for a fraudulent document, in order to give it authenticity. Qatar's NHRC had no right or authority to use the emblem of the UK Parliament. The NHRC and Qatar misused the emblem, deliberately to deceive.

36. I respectfully invite this Court to turn its attention to slide 6; again, this document is found in your folders at tab 13. This shows a statement made by Lord Ahmed of the British House of Lords. He was one of the Members of Parliament who did visit Qatar on this trip. Lord Ahmed confirmed that Qatar's report was not authentic. He also confirmed that Qatar's use of the seal was not authorized. His comments included: "I certainly did not authorize using the portcullis logo. I have no authority to use the logo except on my letters from the House of Lords."⁴⁶

37. Qatar also submitted false and misleading evidence in its Memorial in the present case, filed just two weeks ago. I refer, just for example, to Annex 272 in Volume XII of Qatar's Memorial, which you can see excerpted on the slide, slide 7. Annex 272 is an affidavit from Mr. Ahman Mohammed Al-Mana. We are told by Qatar that he is a member of the working group that oversees Qatar's Claims Compensation Committee. In his witness statement, he refers to 109 purported witness declarations submitted in Qatar's Memorial. I respectfully draw the Court's

⁴⁶ A. Pukas, "British lawmakers deny link to Qatar 'report' on impact of boycott", *Arab News*, 22 Feb. 2018, available at: <http://www.arabnews.com/node/1252126/middle-east>.

attention to paragraph 12 of Mr. Al-Mana's statement. In this paragraph, he describes how the 109 purported witness declarations came to be written. He says, "[i]nitial drafts of the declarations were prepared based on the interviews and information collected"⁴⁷.

38. Mr. Al-Mana admits that the initial drafts of these 109 witness declarations were not actually written by the witnesses. He confirms that the declarations were written outside the witnesses' presence. He confirms that only after the drafts were written were they presented to the witnesses for their endorsement. In other words, the declarations were presented to the witnesses as a *fait accompli*. And Mr. Al-Mana fails to inform the Court who actually wrote the drafts of these witness declarations.

39. Moreover, all but a handful of the witness declarations have only been provided to the UAE in a redacted form — even as the Court has been given unredacted versions. As the Court will be aware, such tampered evidence — particularly tampered witness evidence — is unacceptable in international *fora* and even before national tribunals. These redactions are clearly an attempt by Qatar to avoid the forensic examination of its evidence.

40. I respectfully invite the Court now to turn to slide 8 of the presentation. This is a document submitted last week by Qatar for the present hearing. It is yet another piece of evidence that does not withstand scrutiny. This letter is from the President of Qatar's Communications Regulatory Authority to Qatar's Agent in this proceeding. This letter expressly admits that the eChannels website — that is, the UAE visa website that was set up by the UAE to allow Qatari citizens to apply for permission to return to the UAE — was "blocked from access within the territory of Qatar"⁴⁸. Qatar has thus admitted that it blocked the website through which the UAE has been helping the citizens of Qatar to obtain visas. I invite the Court to consider the implications of this admission by Qatar. No doubt the Court will hear this week technical IT jargon from Qatar to explain its astonishing misconduct — words such as "hacking" and "malware". However, if you hear such words, Mr. President and Members of the Court, you can disregard them, safe in the

⁴⁷ Affidavit, State of Qatar Compensation Claims Committee, 16 Apr. 2019, Memorial of the State of Qatar ("MQ"), 25 Apr. 2019, Vol. XII, Annex 272, para. 12.

⁴⁸ See letter from the President of the Communications Regulatory Authority of the State of Qatar to H.E. Dr. Mohammed Abdulaziz Al-Khulaifi, Legal Advisor to H.E. Deputy Prime Minister and Minister for Foreign Affairs, 30 Apr. 2019, Documents submitted by Qatar on 30 Apr. 2019 in the context of the UAE's request for provisional measures, Annex 33, para. 6.

knowledge that at no point in this letter — to which I just took you — does Qatar’s own regulator even allege hacking or malware with respect to the UAE’s visa application website.

41. It is notable that Qatar kept its website blocking hidden and undisclosed. Qatar only admitted that it blocked the website after the UAE revealed the blocking in its Request for provisional measures. The furtive nature of Qatar’s attempt to suppress the UAE’s assistance to Qatar’s own citizens is telling indeed. It contradicts a great many of Qatar’s allegations in these proceedings. For example, the Court will no doubt recall that Qatar’s submissions in its Memorial referred to the UAE’s online permit-application system as ineffective⁴⁹. I submit to the Court that Qatar’s blocking of the website is, in fact, evidence that the website was highly effective. That is why Qatar interfered with the website in the first place — in order to present counter-factual support for its false narrative.

42. The 109 declarations submitted by Qatar in its Memorial are without value as evidence to support Qatar’s claims. They are no better than Qatar’s NHRC press release that describes what was actually a Qatari-fabricated false report of a non-existent fictitious British Parliament report. Or, indeed, the 82 forged documents that Qatar submitted to this Court in the *Qatar v. Bahrain* case.

43. I therefore find myself making the very same submission to you today as I did in the *Qatar v. Bahrain* case, that is: the evidence and allegations and factual assertions submitted by Qatar — including from Qatar’s NHRC and in Qatar’s Memorial — cannot safely be relied upon by this Court or its Members. This irreparably contaminates every aspect of Qatar’s case.

44. Mr. President, this concludes my first statement. I ask the Court to give the floor to my colleague, Professor Reisman, who will demonstrate why the Court should indicate the first of the provisional measures requested by the UAE. I am grateful for the Court’s attention.

The PRESIDENT: I thank Mr. Volterra and I now invite Professor Reisman to take the floor. You have the floor.

⁴⁹ See e.g. MQ, para. 5.77.

Mr. REISMAN: Thank you, Mr. President.

**III. FIRST PROVISIONAL MEASURE: THAT QATAR IMMEDIATELY WITHDRAW ITS
8 MARCH 2018 COMMUNICATION SUBMITTED TO THE CERD COMMITTEE
PURSUANT TO ARTICLE 11 OF THE CERD**

1. Mr. President, Members of the Court, it is an honour to appear before you on behalf of the UAE.

2. Mr. President, this is an unusual situation. The Court issued provisional measures to both Parties on 23 July 2018. The UAE opposed their indication, *inter alia*, on the ground of absence of jurisdiction. The UAE reserves its doubts as to the Court's overall jurisdiction in the case, as set out in its Preliminary Objections, and takes note of the Court's statement that it is still an open question⁵⁰. But the UAE respects and has accepted the Court's finding of sufficient prima facie jurisdiction to sustain an order of provisional measures and has been complying with the Order, as will be detailed today.

3. In the meanwhile, Qatar continues to press the same claim against the UAE, in parallel proceedings in the CERD Committee, based on the same treaty and seeking the same remedy. Just this past Friday, before the CERD Committee, Qatar reiterated its request that a Conciliation Commission also be established under the CERD. Qatar's Memorial asserts that it has filed its claims twice, before this Court and the CERD Committee, because it is "looking for any and all possible ways to settle the dispute"⁵¹. Qatar thus admits that the dispute before the CERD Committee (and the Conciliation Commission, should Qatar's request for a third proceeding be accepted) is identical to the dispute before this Court. And indeed, the dispute involves the same Parties, the same facts, the same arguments (on both jurisdiction and merits) and seeks the same relief.

4. Qatar's decision to file the same dispute in two different *fora* is compelling the UAE to defend itself on multiple fronts. It is compromising the UAE's ability to defend itself in these proceedings, in ways which may prove irreparable. In the provisional measures phase of the case,

⁵⁰ See RPMUAE, paras 26-28.

⁵¹ MQ, para. 3.189.

the only means available to the UAE to defend itself is to seek from the Court an order directing Qatar to desist from the parallel procedure it is pursuing in the CERD Committee.

5. Mr. President, parallel dispute settlement procedures in the Court and an international human rights treaty body are novel. There has never been an inter-State complaint of a violation of the ICCPR before the United Nations Human Rights Committee. And Qatar's complaints against the UAE and Saudi Arabia are the first such cases in the CERD's history. Although there have been a few instances of parallel proceedings, this is, for a number of reasons, a case of first impression, one which could affect cases in the future, as the institutional diversity of the international legal system increases.

6. In domestic legal systems, prosecution of the same suit in multiple *fora* is not uncommon. The solution to the chaos that would otherwise result is the *lis pendens* rule, according to which "domestic courts cannot accept jurisdiction over a case already pending before another court in the same system"⁵². In the common law, a court has discretion to stay its proceedings⁵³. In international dispute-settlement procedure, *lis pendens*, perhaps because of its comparative infrequency, may not yet have crystallized as a general principle or other rule of international law⁵⁴, a point which Qatar has been at pains to argue⁵⁵. But Qatar misses the point: the Court may fashion a type of *lis pendens* order, as a case-specific and contextually appropriate remedy to ensure that the procedure be fair by restoring the equality of arms.

7. It will be recalled that Article 41 (1) of the Statute provides, "[t]he Court shall have 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" (emphasis added). ***And Indeed*** in *The MOX Plant Case*, the ITLOS tribunal suspended its proceedings in deference to an existing proceeding before the European Court of Justice. It did so on "considerations of mutual respect and

⁵² K. Yannaca-Small, *Parallel Proceedings*, in *Oxford Handbook of International Investment Law*, P. Muchlinski, F. Ortino and C. Schreuer (eds.), 2008, p. 1021.

⁵³ See K. Yannaca-Small, *Parallel Proceedings*, in *Oxford Handbook of International Investment Law*, P. Muchlinski, F. Ortino and C. Schreuer (eds.), 2008, p. 1021.

⁵⁴ See K. Yannaca-Small, *Parallel Proceedings*, in *Oxford Handbook of International Investment Law*, P. Muchlinski, F. Ortino and C. Schreuer (eds.), 2008, p. 1021; Y. Shany, *The Competing Jurisdiction of International Courts and Tribunals*, 2003, p. 244; D. Reichert, "Problems with Parallel and Duplicate Proceedings: The Litispendence Principle and International Arbitration", 8 (3) *Arbitration International* (1992), p. 237.

⁵⁵ See *State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, Response of the State of Qatar, 14 Feb. 2019, RPMUAE, Vol. II, Annex 18, pp. 353-460, p. 449, para. 180.

comity” and the concern over potentially “conflicting decisions on the same issue” which “would not be helpful to the resolution of the dispute between the Parties”⁵⁶.

A. The parallel processes: Qatar’s duplicative procedure

8. Mr. President, every power in international law, and every right and privilege provided for a State in a treaty, is to be executed in good faith. This is a principle so fundamental and widely accepted that citations of authorities would be supererogatory.

9. The prescribed procedure for handling complaints under the CERD would be as follows. I draw your attention to slide 10. First, a complaint would be filed under Article 11 (1). Second, upon unsuccessful negotiations or other procedures, the matter would be referred again to the CERD Committee at the request of either party to the dispute, in accordance with Article 11 (2). Third, after inquiring whether domestic remedies have been exhausted, the CERD Committee would collect the relevant information and appoint an *ad hoc* Conciliation Commission under Article 12. And fourth, under Article 13, the Conciliation Commission would then be charged with determining all relevant issues of fact based on information it receives from the Committee or itself collects, and making recommendations for the resolution of the dispute.

10. Thus, the procedures provided in Articles 11 to 13, which are connected to Article 22, create an integrated mechanism for dispute settlement, with the Court as the ultimate contingent decision-maker. As a precondition to that step, the procedure seeks accommodative resolutions through a sequence of graduated dispute settlement procedures, each manifesting increasing structure. As the Court itself observed in *Georgia v. Russian Federation*, this arrangement had the added advantage of making the Convention more acceptable to States who were wary of compulsory dispute settlement by the Court⁵⁷. And this arrangement undoubtedly will have informed the consent of parties to the CERD ~~with~~ *and* its dispute resolution procedures.

11. Mr. President, the contrast between the procedures for handling complaints prescribed by the CERD versus Qatar’s actions is striking and demonstrates the absence of good faith. I refer the

⁵⁶ *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, para. 28.

⁵⁷ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 129, para. 147.

Court to slide 11, which summarizes the chronology of Qatar's submissions. As can be seen, Qatar filed its Communication under Article 11 on 8 March 2018⁵⁸. Thereafter, the CERD Committee was scheduled to examine the Communication at its session commencing 23 April 2018.

12. Just two days after that session began, during the Committee's session, Qatar sent the UAE an "ultimatum" letter demanding the negotiation, within two weeks, of its complaints to the CERD⁵⁹. The UAE received the letter on 1 May 2018.

13. The CERD Committee only decided to transmit the 8 March Qatar Communication to the UAE on 4 May 2018⁶⁰ so that the UAE received it on 7 May 2018. So, Qatar's "ultimatum" letter was received by the UAE even before the UAE had had a chance to assess the contents of Qatar's Communication to the CERD Committee.

14. Under CERD Article 11, the UAE had three months to reply to the Communication it received on 7 May 2018, that is, it had until 7 August 2018⁶¹. But Qatar did not wait to abide by Article 11 and give the UAE a chance to properly formulate its reply. Rather, on 11 June 2018, Qatar filed its Application instituting proceedings before the Court⁶².

15. The Court delivered its Provisional Measures Order on 23 July 2018⁶³. Following that Order, Qatar went back, once again, to the CERD Committee and referred the matter to it on 29 October 2018, under Article 11 (2)⁶⁴.

⁵⁸ See *State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, Qatar's Communication submitted pursuant to Article 11 of the International Convention on the Elimination of all Forms of Racial Discrimination, 8 Mar. 2018, RPMUAE, Annex 20.

⁵⁹ See Request for Negotiation to the UAE, 25 Apr. 2018, received via fax and registered mail on 1 May 2018 (certified translation), Application of the State of Qatar ("AQ"), 11 June 2018, Annex 21.

⁶⁰ See *State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, Communication submitted pursuant to Article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination, 8 Mar. 2018, 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, 7 May 2018, Documents submitted by the UAE on 25 June 2018 in the context of Qatar's request for provisional measures, exhibit 10, p. 1.

⁶¹ See *State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, Communication submitted pursuant to Article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination (*State of Qatar v. United Arab Emirates*), 8 Mar. 2018, Documents, 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, 7 May 2018, Documents submitted by the UAE on 25 June 2018 in the context of Qatar's request for provisional measures, exhibit 10, p. 1.

⁶² See AQ.

⁶³ See *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. 406.

16. As the slide shows, Qatar jumped the line of the prescribed process in Article 22 by bringing its case with the very same complaint of alleged CERD violations to the Court *after* initiating the CERD process but *before* even attempting to complete it. In initiating these present proceedings before the Court, Qatar abandoned any other procedure that might have been available to it under Article 11 (2). It invoked, instead, the ultimate dispute settlement procedure under Article 22: the International Court of Justice. This, Mr. Chairman, is the logical conclusion that can be drawn based on the sequence of dispute settlement procedures provided for States Parties under CERD Article 22.

B. Policies at stake

17. Mr. President, the drafters of the CERD Convention *deliberately* decided to avoid situations of overlapping and concurring functions between the CERD Committee, the CERD Conciliation Commission and the Court with regard to the interpretation and application of the Convention. To this end, they designed a sequential framework for dispute settlement. The key of the dispute resolution architecture *in the CERD*, to which its parties consented, is “sequentiality”, not “concurrency”.

18. “Negotiations”, and, more generally, accommodative resolution modalities, are the preferred mode of settlement and Article 22 encourages them. Additionally, Article 22 refers to procedures “expressly provided in the Convention” for dispute settlement: that is, the CERD Committee and the CERD Conciliation Commission under Articles 11 to 13. The Court only comes at the end of this sequence of modes of dispute settlement.

19. The orderly sequence of dispute settlement procedures, whether deemed to be alternative or cumulative, was arranged not merely to set a precondition to resort to the Court, but also to avoid concurrent jurisdiction between the CERD institutions and their procedures, on the one hand, and the Court, on the other.

⁶⁴ 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 Oct. 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 Oct. 2018, p. 2 of Qatar’s Note Verbale, RPMUAE, Annex 21.

20. The fact that Qatar did not even wait for the UAE's response to its CERD Committee complaint but instead started these proceedings shows that Qatar did not seriously consider pursuing the CERD Committee mechanism as required. Qatar, having abandoned resolution through Article 11, was now resorting to the final in the sequence, the Court. Indeed, as shown in slide 12, in its Application of 11 June 2018, Qatar, having invoked the jurisdiction of the Court under Article 22, stated: "Upon the filing of the present Application, the matters in dispute between Qatar and the UAE concerning the UAE's interpretation and application of the CERD therefore fall within the compulsory jurisdiction of the Court."

21. Yet, three and a half months following the Application to the Court, and while arguing that the matter of interpretation and application of the CERD is now before this Court, Qatar reverted to the CERD Committee and invoked the procedure under Article 11 (2)⁶⁵. Qatar requested that the question of whether the measures targeting Qataris constitute racial discrimination within the scope *ratione materiae* of the Convention should be addressed by the Committee itself⁶⁶; this involves interpretation of Article 1 of the Convention. Qatar, in engaging the CERD Committee process and the ICJ all at the same time, is seeking to maintain two parallel procedures.

22. Qatar's effort to activate, at once, all the dispute settlement procedures in Article 22 to see which ones would benefit it more at the end, is what the drafters of the CERD tried to avoid. One of the goals of discouraging and prohibiting such parallel processes is to assure an orderly and fair procedure, a goal which is defeated when more than one process is concurrent. In this regard, it is noteworthy that on 5 April 2019, Qatar requested that the CERD hearings be rescheduled on account of their coinciding with the present ICJ hearings; its Agent before the Court also represents Qatar in the CERD Committee⁶⁷.

⁶⁵ 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 Oct. 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 Oct. 2018, p. 2 of Qatar's Note Verbale, RPMUAE, Annex 21.

⁶⁶ *State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, Response of the State of Qatar, 14 Feb. 2019, MQ, Vol. 4, Annex 121, Sect. II.

⁶⁷ See Note Verbale from Qatar to the Committee on the Elimination of Racial Discrimination, 8 Apr. 2019, transmitting letter requesting that the CERD Committee reschedule the CERD hearing, 5 Apr. 2019, POUAE, Vol. II, Annex 19, pp. 461-608, p. 608.

23. The fact that Qatar took such a position confirms one of the arguments in the UAE's Request. The point is not to sport over "an engineer hoist on his own petard", but to draw attention to even the mundane problems infecting parallel procedures. Qatar demonstrated through its actions the inefficiencies and potential prejudices of overlapping proceedings.

24. Mr. President, Article 26 of the Vienna Convention on the Law of Treaties declares that every treaty in force must be performed in good faith by the parties. An abusive exercise of a right by a party *to a treaty* is a breach of that treaty and an abuse of right. The late Professor Orrego Vicuña drew attention to the international interest in "avoiding contradictions of substance or the abnormality of parallel proceedings, and the injustice that ~~false~~ often results from this situation"⁶⁸. Elsewhere, Professor Orrego spoke of "the abuse that the parallel proceeding might entail with the purpose of frustrating the legitimate rights of another party"⁶⁹. In this case, this abusive exercise by Qatar of the rights that are provided in CERD Articles 11 to 13 and 22, for an end different from the one for which the rights were created, such as the orderly resolution of disputes, is at the expense of the UAE. If this abusive exercise is not sanctioned, it will not only continue causing injury to the UAE, but it will also disrupt the carefully designed dispute settlement mechanism provided in the CERD. And if it is not called to account, it will open the door for more abuses in the future.

25. The initiation of proceedings before the Court by Qatar has also raised the possibility of a different outcome emerging, about the same time, that could shatter the expectations of certainty in the assessment of international law, essential in an area as sensitive as racial discrimination. Any recommendations that might finally emerge from the CERD Committee and the Conciliation Commission will involve interpretation and application of the Convention that Qatar has specifically asked the Court to undertake. It is also possible that CERD recommendations will emerge before the Court will have a chance to hear the Parties and issue its decision. Will the Court be bound by interpretations of the Convention made by the CERD institutions? If not, the Court

⁶⁸ F. Orrego Vicuña, "Claims, International", *Max Planck Encyclopedia of Public International Law*, 2015, para. 53.

⁶⁹ *Ibid.*, para. 54.

then becomes an alternative option for Qatar in case it does not find the CERD Committee's interpretations and recommendations to its liking.

26. On the other hand, if the Court is not bound by interpretative statements of the CERD institutions, and issues its own decision and the decisions are made about the same time, what is the consequence for certainty required in this important area of human rights law? The potential for conflicting legal outcomes is one of the reasons why there are no precedents affirming or implying that parallel dispute-settlement procedures between States are permissible, let alone desirable.

27. The goal of consistency thus mandates the interpretation of Qatar's taking the case to the Court, on 11 June 2018, as a termination of, or a withdrawal from, the CERD procedures Qatar initiated on 8 March 2018.

28. Finally, the policies of efficiency and economy are ill-served by Qatar's action. Duplication doubles the costs for parties and decision-makers.

29. Should the CERD proceedings be allowed to continue, there is a real and imminent risk that irreparable prejudice will continue to be caused to the UAE's procedural rights before a final judgment is rendered by the Court. The CERD Committee is currently seised of the very question in dispute in the present proceeding.

30. The imminent injury at hand is to the procedural rights of the UAE, as it is required to show its hand regarding its litigation strategy and the arguments and evidence it will present in either proceeding. This forcing of its hand will violate the principle of equality of arms, which is to be seen as a general principle of law.

31. In addition, there are substantial additional costs that are inflicted on the UAE because of defending itself in multiple proceedings.

32. As this is a case of first impression, there is also the chance of unsettled law, divergence and fragmentation, which should not be imposed unilaterally on the UAE and the international legal system as a whole. To allow Qatar to use multiple dispute settlement procedures concurrently creates *precisely* the chaos that the drafters of the CERD intended to avoid.

C. Decision options

33. Mr. President, having engaged the Court as the last dispute settlement forum in the sequential dispute settlement arrangements, Qatar cannot revert to the CERD Committee to simultaneously engage the dispute settlement mechanisms of Articles 11 to 13. A contextually sensitive remedy that would be compatible with the Court's powers and practice would be an order, noting that Qatar had terminated or withdrawn the CERD proceeding by seising the Court and directing Qatar to desist from its action before the CERD Committee.

D. The addressee

34. Qatar is subject to the Court's jurisdiction and is the logical recipient of such an order.

35. The CERD Committee is not subject to the Court's jurisdiction but, in a comparable situation, the Permanent Court has indicated, indirectly, its view with the expectation that the indirect-addressee would take it into account. Thus, in *Serbian Loans*, the Permanent Court expressed its position that an arbitral tribunal would consider equities presented by the fact of a war on Serbia's repayment of certain bearer bonds. The Court stated:

“The economic dislocations caused by the war did not release the debtor State, although they may present equities which doubtless will receive appropriate consideration in the negotiations and — if resorted to — the arbitral determination for which Article II of the Special Agreement provides.”⁷⁰

36. Here, the Court may — albeit in an order directed to Qatar — *also* indicate its view of the appropriate procedural consideration to the CERD Committee.

37. Mr. President, Members of the Court, I thank you for your attention and your patience in suffering my hoarse voice and unless the President wishes to pause, may I ask that my colleague, Professor Sarooshi be called.

The PRESIDENT: I thank Professor Reisman. Before inviting the next speaker to take the floor, the Court will observe its usual break of 15 minutes. The hearing is suspended.

The Court adjourned from 11.25 a.m. to 11.45 a.m.

⁷⁰ *Serbian Loans, Judgment No. 14, 1929, P.C.I.J., Series A, No. 20*, p. 40.

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

Mr. SAROOSHI:

IV. SECOND PROVISIONAL MEASURE: THAT QATAR IMMEDIATELY DESIST FROM HAMPERING THE UAE'S ATTEMPTS TO ASSIST QATARI CITIZENS SEEKING TO RETURN TO THE UAE

1. Mr. President, Members of the Court, it is an honour for me to appear before you on behalf of the UAE.

2. The provisional measures which the Court has already indicated in this case require that the UAE must ensure that certain Qatari citizens who decided to leave the country can return to the UAE. In the hearing last year, Qatar itself placed great emphasis on the UAE being required to take such measures in the first hearing before the Court⁷¹.

3. It is now remarkable that Qatar has taken the step of blocking access from within its territory to a UAE Government visa website, which allows Qatari citizens to apply for and obtain entry visas precisely to return to the UAE. Qatar now admits that it has been blocking access to this website. This was admitted in a letter dated 30 April 2019 from the President of Qatar's Communications Regulatory Authority to its Agent in these proceedings, which Qatar then submitted to the Court last week. I shall consider this letter shortly. The true position then is that Qatar is playing a significant role in preventing its citizens from going back to the UAE.

4. As such, the Court is now requested to grant the UAE's second provisional measure, which says 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"⁷².

5. Mr. President, Members of the Court, there are two reasons why you should grant this second provisional measure.

6. First, the blocking by Qatar of access to the visa website is an act which aggravates and extends the dispute between the Parties.

⁷¹ See, e.g. CR 2018/14, p. 29, para. 20 (Amirfar).

⁷² RPMUAE, para. 74 (ii).

7. Second, the blocking by Qatar of access to the visa website poses a risk of irreparable prejudice, both to the UAE's due process and other procedural rights, but also to the UAE's right to take necessary action to comply with the Court's provisional measures already ordered in this case. As I shall explain, Qatar's act has the effect of manipulating and fabricating evidence in support of its substantive claims against the UAE. This should simply not be tolerated by the Court.

8. Before I turn to examine these arguments in detail, I would like to explain briefly the factual background to Qatar's blocking of access to the UAE visa website.

A. Qatar's blocking of access to the UAE's visa website

9. After the UAE terminated its diplomatic relations with Qatar, the UAE required Qatari citizens to have a visa to enter the country⁷³.

10. It is of course lawful for any State to require prior permission for foreign nationals to enter its territory in the form of a visa or other permit.

11. Let me be clear: it is not just Qatari citizens who need a visa to enter the UAE. Citizens from at least 120 States must have a visa to enter the country.

12. The UAE Ministry of Foreign Affairs and International Cooperation in an official Statement made on 5 July 2018 clarified the entry and residence requirements applicable to Qatari citizens. The Statement, which is contained at tab 14 of the judges' folders, clarified that Qatari citizens already resident in the UAE need not apply for permission to continue their residence in the UAE. However, they are encouraged to obtain a permit for re-entry into the UAE⁷⁴ if they leave the country.

13. There is here no travel ban. There is no expulsion of Qatari citizens. But if Qatari citizens who are UAE residents leave the country, then they will need a visa to re-enter.

14. The UAE Ministry of the Interior set up a telephone hotline on 11 June 2017 to help Qatari citizens apply for a permit to re-enter the country⁷⁵. Then, on 1 August 2017, the UAE set up

⁷³ See RPMUAE, para. 10.

⁷⁴ UAE Ministry of Foreign Affairs and International Cooperation, "An Official Statement by the UAE Ministry of Foreign Affairs and International Cooperation", 5 July 2018, available at: <https://www.mofa.gov.ae/EN/MediaCenter/News/Pages/05-07-2018-UAE-Statement-of-MoFAIC.aspx>.

⁷⁵ See UAE Ministry of Foreign Affairs and International Cooperation, Announcement Regarding Directive for Hotline, 11 June 2017, Documents submitted by the UAE on 25 June 2018 in the context of Qatar's request for provisional measures, exhibit 2. See also *Order of 23 July 2018*, dissenting opinion of Judge Crawford, para. 6.

an official visa application website which is located at “echannels.moi.gov.ae”⁷⁶. This is the only website that I shall be talking about and it is the only website in relation to my presentation this morning, my submissions. And you will see the front page of the website, which is slide 14 on your screens. And this is the website to which Qatar now blocks access. You can see there the web address of the visa website at the top. Qatari citizens who were resident in the UAE are able to apply for permits to return or travel through the UAE using *precisely* this website.

15. The visa application website was publicly announced by the UAE Government in the press⁷⁷. And an example of this announcement is the next slide. This is a newspaper article taken from the *Gulf News* dated 1 August 2017 with the title, you will see “Apply for UAE visa from comfort of your own home”. You will see also that it says “The Ministry of the Interior launched ‘E-channels’, a new system of smart services that lets nationals and residents apply for entry permits and residency visas within 10 minutes”, and it continues:

“[u]nder the new system, people don’t need to physically visit different visa centres in the country. Instead, they can register at <https://echannels.moi.gov.ae> and select the services required. Individuals will need an email id and password to log into the system, said Brigadier Mansour Ahmad Al Daher, director-general of residency and naturalisation department of Abu Dhabi.”

16. The website is a valuable tool for Qatari citizens with UAE resident status but who have left and are now in Qatar and who wish to apply for a re-entry visa back into the UAE.

17. Despite the importance of this visa website, it now transpires that Qatar has actually been secretly blocking access by its ~~own~~ citizens to the website. Qatar has only admitted this after an investigation by the UAE and when video evidence was filed in support of the UAE’s Request for provisional measures dated 22 March 2019. Indeed the first time that Qatar has ever brought the matter to the UAE’s attention, let alone admitted the blocking, was on 30 April 2019, one month after the UAE’s Application and evidence had been filed with the Court.

18. Qatar’s admission is contained in a letter from its Communications Regulatory Authority to its Agent in these proceedings. The letter is dated 30 April 2019 and it is Annex 33 to Qatar’s List of Documents most recently filed with the Court.

⁷⁶ See Federal Authority for Identity & Citizenship website, available at: <https://echannels.moi.gov.ae>.

⁷⁷ See e.g. A. Ahmad, “Apply for UAE visa from comfort of your own home”, *Gulf News*, 1 Aug. 2017, available at: <https://gulfnews.com/uae/government/apply-for-uae-visa-from-comfort-of-your-own-home-1.2067647>.

19. Paragraph 5 of this letter says “in the context” of “the start of the political crisis with the UAE in June 2017 . . . the UAE travel website ‘echannels.moi.gov.ae’ (the ‘Echannels website’) was identified as having become directed at Qataris sometime in the fall of 2018”. The letter goes on in paragraph 5 to acknowledge that the website “serves as the portal of the UAE government for entry permit applications”.

20. The Court should see this blocking for what it is: a measure taken by Qatar as part of its response to what the CRA letter calls “the political crisis with the UAE”.

21. My next slide shows paragraph 6 of the letter which confirms, and you will see it highlighted there, “[a]ccordingly, on 1 January 2019, the Echannels website was blocked from access within the territory of Qatar as a precautionary measure to protect Qataris”.

22. As I have mentioned, the UAE has obtained video evidence that Qatar blocked access to the visa website⁷⁸. Three videos were provided to the Court. They are Annexes 22.A to C and they accompany the UAE’s Request for provisional measures. Given Qatar’s recent admission to its blocking, I will only show the censorship notice that a user within Qatar would find if attempting to access the visa website from within Qatar. This notice appears in the first video, as I have mentioned, which is Annex 22.A.

23. The slide that you see before you shows an identical censorship notice that Qatar used when they earlier blocked access to the Doha News website in 2016. This is the same notice. And you will see from the notice that it says clearly that “[t]his site has been blocked” and again further down that “[t]he web page you are trying to access has been blocked as the content contains prohibited materials”. The earlier blocking by Qatar of access to the Doha News website in 2016 was reported in the press, for example, by Middle East Eye and Reporters Without Borders⁷⁹. These news articles are at tabs 15 and 16 in your judges’ folders.

24. In sum, this evidence demonstrates that Qatar is blocking access at present in its territory to the UAE visa application website.

⁷⁸ See Video Recordings Taken in Doha of Blocked Federal Authority for Identity and Citizenship Website, RPMUAE, Annex 22 (A-C).

⁷⁹ See H. Fahmy, “Qatar blocks English-language website Doha News”, Middle East Eye, 1 Dec. 2016, available at: <https://www.middleeasteye.net/news/qatar-blocks-english-language-website-doha-news>. See also “Doha News website blocked in Qatar”, Reporters Without Borders, 2 Dec. 2016, available at: <https://rsf.org/en/news/doha-news-website-blocked-qatar>.

25. I now turn to consider the two reasons why the Court should require Qatar to allow its citizens and others to access this visa website.

B. Qatar's act aggravates and extends the dispute

26. First, Qatar's act aggravates and extends the dispute. The Court has, of course, already granted a general non-aggravation provisional measure in this case, but the UAE now seeks a distinct and specific measure which includes a requirement that Qatar unblock access to the website.

27. Qatar's act here is nothing less than an aggravation of the dispute in, I am afraid to say, a harmful and cynical way. I say harmful and cynical because Qatar purports to act in this case on behalf of its citizens, but Qatar is preventing those very same citizens from accessing a visa website that can facilitate their return to the UAE.

28. The visa application website is particularly important given that the UAE does not maintain a diplomatic or consular mission in Qatar. One need only consider, for example, those Qatari citizens who may be travelling or even visiting family in Qatar and are being prevented from applying for their re-entry visa using the UAE visa application website because its access is blocked. This aggravates what Qatar⁸⁰ and indeed the Court itself in its Provisional Measures Order⁸¹ in this case, at paragraphs 27-28, has said are some of the main elements of the dispute between the Parties: namely that Qatari citizens are allegedly being separated from their families, they are allegedly not able to access their homes, their jobs, or have access to medical care or tribunals in the UAE.

29. This is a clear aggravation by Qatar of the dispute and the Court is respectfully requested to order a provisional measure to prevent this continued aggravation.

C. Qatar's act presents a real and imminent risk of irreparable damage to the UAE's rights

30. I now turn to my second argument: that Qatar's blocking of access to the UAE visa website poses a risk of irreparable prejudice to the UAE's rights.

⁸⁰ See *Order of 23 July 2018*, para. 20.

⁸¹ See *ibid.*, paras. 27-28.

31. There are at least two rights that are at risk of irreparable prejudice. First, are the UAE's due process rights; and second, is the UAE's right to take necessary action to ensure compliance with this Court's previous indication of provisional measures.

32. I will demonstrate as required by the Court's consistent case-law that the UAE's rights are "plausible" rights as a party and that a link exists between these rights and the provisional measures being requested⁸².

33. On any view, the UAE's due process rights are "plausible" rights. The Court has consistently applied fundamental due process rights such as the right of "equality of the parties"⁸³, the right to fair and "proper administration of justice"⁸⁴, and the right of parties to present their evidence without being disadvantaged by the actions of the opposing party.

34. Of course these principles and the rights they confer on parties also govern the exercise by the Court of its discretion in granting provisional measures. Qatar itself made reference to the importance of provisional measures being used "to protect the value of this honourable Court's judicial functions more generally"⁸⁵. Qatar cannot now resile from this standard.

35. More importantly, as the Court said in *Burkina Faso v. Mali*, "there can be no doubt of the Chamber's power and duty to indicate, if need be, such provisional measures as may conduce to the due administration of justice"⁸⁶.

⁸² See e.g. *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 126, paras. 63-64; *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, pp. 1165-1166, paras. 71-72.

⁸³ See *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, pp. 179-180, para. 34; *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development, Advisory Opinion, I.C.J. Reports 2012 (I)*, p. 10, para. 44.

⁸⁴ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, pp. 25-26, para. 31; *Oil Platforms (Islamic Republic of Iran v. United States of America), Counter-Claim, Order of 10 March 1998, I.C.J. Reports 1998*, p. 205, para. 43; *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO, Advisory Opinion, I.C.J. Reports 1956*, p. 86. See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Counter-Claim, Order of 17 December 1997, I.C.J. Reports 1997*, p. 257, para. 30; *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Preliminary Objections, Judgment, I.C.J. Reports 1964*, p. 43.

⁸⁵ CR 2018/12, p. 51, para. 2 (Goldsmith).

⁸⁶ *Frontier Dispute (Burkina Faso/Republic of Mali), Provisional Measures, Order of 10 January 1986, I.C.J. Reports 1986*, p. 9, para. 19. See also *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Provisional Measures, Order of 15 March 1996, I.C.J. Reports 1996 (I)*, pp. 22-23, para. 41.

36. On any view, these due process rights are certainly “plausible” rights of the UAE as a party in this case. It is also beyond doubt that a link exists between these rights and the provisional measures being requested.

37. Indeed, Qatar’s blocking of access to the visa website is causing irreparable damage to the UAE’s rights to have a fair hearing on the merits in the case by Qatar’s manipulation and fabrication of evidence. Let me briefly explain how this is taking place.

38. Qatar’s factual case in the substantive proceedings is that the UAE is allegedly preventing Qatari citizens who are UAE residents but who have left the country from now returning back to the UAE. But no such action has been taken by the UAE. It is Qatar’s act in blocking access to the visa website that is in part, or substantively, preventing Qatari citizens from re-entering the country. In this way, Qatar is creating the false impression that the UAE has imposed in effect a travel ban on Qatari citizens.

39. Since there is no UAE Consulate in Qatar, its blocking of access makes it much more difficult for Qatari citizens within Qatar to obtain an UAE visa in order to return. Inevitably, Qatar will then cite as evidence a number of examples of Qatari citizens who were previously UAE residents but who upon leaving the country have not subsequently been able to return. This is Qatar in effect fabricating evidence in support of its argument that the UAE continues to prohibit Qatari citizens from entering the UAE. There can be no question that this is Qatar’s central argument in the case. Indeed, the Court itself recorded in its Provisional Measures Order at paragraph 19 that Qatar’s argument is that the UAE “continues to prohibit Qataris from entering the UAE”.

40. Qatar’s fabrication of evidence is causing irreparable damage to the UAE’s rights to have a fair hearing in the case and its right to a “fair and equal opportunity” to present and rebut evidence in the case.

41. The UAE is not asking the Court to do something unprecedented or novel here. The Court has in several cases ordered provisional measures where acts by a party may have affected evidence that was material to the Court’s eventual decision in a case. For example, in *Burkina Faso v. Mali*, the Court granted a provisional measure which required that “[b]oth Governments should refrain from any act likely to impede the gathering of evidence material to the

present case”⁸⁷ and the Court in *Cameroon v. Nigeria* ordered a provisional measure which required “[b]oth Parties [to] take all necessary steps to conserve evidence relevant to the present case”⁸⁸.

42. Since we are dealing with a provisional measure, it is not necessary for the Court to make a finding of a probability of harm taking place, let alone a finding of inevitability of harm. The Court’s case-law establishes with admirable clarity that it is sufficient if there is a real and imminent *risk* of irreparable prejudice⁸⁹.

43. In the present case, not only is there a real and imminent risk of irreparable prejudice to the UAE’s due process and procedural rights, but as I speak they are being affected with each Qatari citizen who tries to access the visa webpage being blocked by its own Government. The prejudice is ongoing. It is occurring now. The condition of imminence is clearly made out.

44. Finally, I now turn to explain why there is also irreparable prejudice being caused to the UAE’s right to take necessary action to ensure compliance with the Court’s Provisional Measures Order in this case.

45. The Court’s Order required, for example, that the UAE ensure that “families that include a Qatari [be] reunited”⁹⁰ and that Qataris be allowed access to tribunals and other judicial organs in the UAE⁹¹.

46. The visa website is an important way for the UAE to comply with these provisional measures. By blocking access, Qatar is violating the UAE’s right to take necessary action to comply with the Court’s Order and, indeed, it is also a flagrant violation by Qatar itself of the Court’s Order. The UAE respectfully requests the Court to put a stop to these flagrant violations.

47. Mr. President, Honourable Members of the Court, thank you for your attention. I would now ask that you give the floor to Dr. Fogdestam-Agius.

⁸⁷ *Frontier Dispute (Burkina Faso/Republic of Mali), Provisional Measures, Order of 10 January 1986, I.C.J. Reports 1986*, p. 12, para. 32.1.B.

⁸⁸ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Provisional Measures, Order of 15 March 1996, I.C.J. Reports 1996 (I)*, p. 25, para. 49 (4).

⁸⁹ See e.g. *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, p. 548, para. 47.

⁹⁰ *Order of 23 July 2018*, para. 79 (1) (i).

⁹¹ *Ibid.*, para. 79 (1) (iii).

The PRESIDENT: I thank Professor Sarooshi and I will now invite Dr. Fogdestam-Agius to address the Court. You have the floor.

Ms FOGDESTAM-AGIUS:

V. THIRD PROVISIONAL MEASURE: THAT QATAR IMMEDIATELY STOP ITS NATIONAL BODIES AND MEDIA OUTLETS FROM AGGRAVATING AND EXTENDING THE DISPUTE

1. Mr. President, Members of the Court, it is a great honour to appear before you on behalf of the United Arab Emirates.

2. On 23 July 2018, this Court indicated that the Parties must refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve⁹².

3. The State of Qatar has not observed this Order. Instead, it has, amongst other measures, orchestrated an aggressive public relations campaign against the UAE. Through its National Human Rights Committee, also known as the NHRC, and through media entities under its control, Qatar spreads false information to international agencies and to the public, including its own citizens.

4. Qatar's conduct aggravates this dispute, in breach of the Court's Order. The UAE seeks the protection of the Court and respectfully requests provisional measures against that conduct.

A. Qatar's NHRC Report of 23 January 2019 aggravates the Parties' dispute

5. Qatar's NHRC has sought to interfere publicly in this dispute on numerous occasions. In the last year, it has actively campaigned against the UAE and advanced baseless accusations about the UAE to multiple international bodies⁹³.

6. This activity has recently intensified. On 23 January 2019, Qatar's NHRC published a report claiming that the UAE on 745 occasions had violated the Court's Order on Provisional

⁹² *Order of 23 July 2018*, para. 79 (2).

⁹³ See "Al Marri calls for extensive probe against siege nations", *The Peninsula*, 16 Sept. 2018, RPMUAE, Ann. 23; "Marri urges international community to pressure siege countries to stop human rights violations", *Qatar Tribune*, 30 Sept. 2018, RPMUAE, Ann. 24.

Measures⁹⁴. This Report was broadcast to no fewer than 400 international organizations⁹⁵. The accusations it presents about the UAE are so inflammatory, inaccurate and deliberately misleading that they constitute provocation. These statements harm the UAE's reputation, incite hatred against the UAE and aggravate tensions between the two neighbours⁹⁶.

7. There is no independently verified evidence for any of these statements. The report offers only anonymized anecdotes that, on their face, do not actually support the report's sweeping generalizations. This is perturbing, because, as the Court will recall from Professor Volterra's submissions, this is the same NHRC that has been caught fabricating entire reports.

8. May it please the Court; I will now briefly address the three principal statements in the NHRC's Report.

9. First, as seen on slide 19, Qatar's NHRC states that it is no longer possible for Qatari citizens to attend university in the UAE⁹⁷. However, the official statistics on slide 20, and at tab 17 of your folders, show that, in June 2018, no fewer than 694 Qatari citizens were studying in the UAE⁹⁸. In other words, there were more Qatari students in the UAE a year after the alleged expulsion than there were in 2012, when only 434 Qataris studied in the UAE according to the UNESCO data cited by Qatar in its Memorial⁹⁹.

⁹⁴ See National Human Rights Committee, "Gulf Crisis: Continuing human rights violations by the United Arab Emirates, Report on the non-compliance by the United Arab Emirates with the Order of the International Court of Justice six months following its adoption", 23 Jan. 2019 (the "NHRC Report"), POUAE, Vol. IV, Ann. 156, pp. 671-689. See also "UAE continues to violate ICJ decision", *Qatar Tribune*, 24 Jan. 2019, RPMUAE, Ann. 19; "Report on UAE violations next month, says al-Marri", *Gulf Times*, 6 Dec. 2018, RPMUAE, Ann. 26; "'745' Emirati violations of ICJ decisions", *Al-Watan*, 24 Jan. 2019, RPMUAE, Ann. 27; "NHRC unveils report detailing continued rights violation by UAE despite ICJ decision", *The Peninsula*, 24 Jan. 2019, RPMUAE, Ann. 28; "Despite the ICJ Order . . . Qatari accounts document Emirati violations", *Al Jazeera*, 24 Jan. 2019, RPMUAE, Ann. 29.

⁹⁵ See "UAE continues to violate ICJ decision", *Qatar Tribune*, 24 Jan. 2019, RPMUAE, Ann. 19; "'745' Emirati violations of ICJ decisions", *Al-Watan*, 24 Jan. 2019, RPMUAE, p. 1, Ann. 27.

⁹⁶ See "UAE continues to violate ICJ decision", *Qatar Tribune*, 24 Jan. 2019, RPMUAE, Ann. 19; "Al Marri calls for extensive probe against siege nations", *The Peninsula*, 16 Sept. 2018, RPMUAE, Ann. 23; "Marri urges international community to pressure siege countries to stop human rights violations", *Qatar Tribune*, 30 Sept. 2018, RPMUAE, Ann. 24; "Report on UAE violations next month, says al-Marri", *Gulf Times*, 6 Dec. 2018, RPMUAE, Ann. 26; "'745' Emirati violations of ICJ decisions", *Al-Watan*, 24 Jan. 2019, RPMUAE, Ann. 27.

⁹⁷ NHRC Report, p. 681.

⁹⁸ See Letter from Matar Ali Kharbush Al Saadi, Director of the IT Department at the Federal Authority for Identity and Citizenship to the Director of the Department of International Law at the Ministry of Foreign Affairs and International Cooperation, 20 June 2018, Documents submitted by the UAE on 25 June 2018 in the context of Qatar's request for provisional measures, exhibit 11.

⁹⁹ See MQ, para. 2.23, fn. 85, citing Affidavit, State of Qatar Planning and Statistics Authority, MQ, Vol. XII, Ann. 273, para. 3.

10. Indisputable evidence before this Court also confirms that, in March 2018, the Emirati Undersecretary for Higher Education asked universities to contact their Qatari students to affirm their right to complete their studies¹⁰⁰. This correspondence is enclosed at tab 18 of your folders and provided in excerpt at slide 21.

11. The Court need also be aware that, in the parallel proceedings before the CERD Committee, and also before UNESCO, similar complaints purportedly made by Qatari citizens have been exposed as false. Qatar there disclosed some information about the allegedly affected students to allow verification. When forensically examined, these complaints — four in total — all turned out to be disingenuous. One student was actively studying in the UAE. One had transferred to another university with access to Emirati academic transcripts. One had been dismissed due to academic difficulties¹⁰¹. And one, finally, remained enrolled but ultimately failed to register for courses.

12. The second statement of Qatar's NHRC, now on slide 22, alleges that: "mixed families were prevented from travelling between the State of Qatar and the UAE. These unilateral and arbitrary measures have caused serious psychological damage to the persons concerned."¹⁰²

13. The anecdotes included in the report do not sustain this statement. They describe mere travel delays. Even as described, these delays were plainly for rational administrative reasons. I invite the Court to study the example provided on slide 23. In this account, it is alleged that a family experienced a delay of seven hours in order to correct the blurred passport picture of a toddler. There is no mention of family separation. And, with respect, this is not a case of psychological distress.

14. The NHRC's statement is contradicted by Qatar's own evidence. At least ten of Qatar's witness statements refer to individuals who travelled quickly and easily using the hotline and the

¹⁰⁰ Communications from several UAE Universities, Mar. 2018, POUAE, Vol. II, Ann. 19, pp. 550-597.

¹⁰¹ See Communication from the UAE in Response to the UNESCO Proceedings Initiated by Three Qatari Students, POUAE, Vol. II, Ann. 19, pp. 461-608. See also *State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, UAE's Comments on Qatar's Response on Issues of Jurisdiction and Admissibility, 19 Mar. 2019, POUAE, Vol. II, Ann. 19, pp. 598-600.

¹⁰² NHRC Report, p. 680.

website set up by the UAE to assist Qatari citizens¹⁰³. These declarations confirm that mixed families do travel between the UAE and Qatar to visit each other¹⁰⁴. In some cases, travel permits were issued within a day¹⁰⁵.

15. What is more, of the 109 Qatari witnesses who gave declarations in this proceeding, 37 confirm that they knew they could travel to the UAE with prior approval, but simply never applied¹⁰⁶. These witnesses complain that they needed to furnish the authorities with standard information reasonably and regularly required for international travel¹⁰⁷. Typical of this, on slide 24 is the statement of one witness, who found it unreasonable to be asked to supply copies of his passport, his child's birth certificate and airline tickets as part of his application for a travel

¹⁰³ See Witness Declaration No. 004, 4 Feb. 2019, MQ, Vol. VII, Ann. 165, paras. 15-20; Witness Declaration No. 011, 31 Mar. 2019, MQ, Vol. VII, Ann. 170, paras. 16 and 19-21; Witness Declaration No. 033, 18 Mar. 2019, MQ, Vol. VII, Ann. 184, para. 18; Witness Declaration No. 036, 2 Apr. 2019, MQ, Vol. VIII, Ann. 185, paras. 9-25; Witness Declaration No. 053, 21 Mar. 2019, MQ, Vol. VIII, Ann. 195, para. 10; Witness Declaration No. 079, 30 Jan. 2019, MQ, Vol. IX, Ann. 206, paras. 19-21; Witness Declaration No. 084, 20 Mar. 2019, MQ, Vol. IX, Ann. 210, Section III, paras. 3 and 9; Witness Declaration No. 093, 29 Jan. 2019, MQ, Vol. IX, Ann. 216, para. 14; Witness Declaration No. 132, 17 Apr. 2019, MQ, Vol. X, Ann. 233, para. 12; Witness Declaration No. 184, 4 Apr. 2019, MQ, Vol. XII, Ann. 267, para. 12.

¹⁰⁴ See e.g. Witness Declaration No. 004, 4 Feb. 2019, MQ, Vol. VII, Ann. 165, paras. 15-20; Witness Declaration No. 033, 18 Mar. 2019, MQ, Vol. VII, Ann. 184, paras. 15-17; Witness Declaration No. 036, 2 Apr. 2019, MQ, Vol. VIII, Ann. 185, paras. 11-16; Witness Declaration No. 058, 4 Apr. 2019, MQ, Vol. VIII, Ann. 197, para. 10; Witness Declaration No. 079, 30 Jan. 2019, MQ, Vol. IX, Ann. 206, paras. 19-20.

¹⁰⁵ See e.g. Witness Declaration No. 079, 30 Jan. 2019, MQ, Vol. IX, Ann. 206, paras. 19-21; Witness Declaration No. 079, 30 Jan. 2019, MQ, Vol. IX, Ann. 216, para. 14.

¹⁰⁶ See Witness Declaration No. 004, 4 Feb. 2019, MQ, Vol. VII, Ann. 165, paras. 15 and 19; Witness Declaration No. 009, 4 Apr. 2019, MQ, Vol. VII, Ann. 169, para. 19; Witness Declaration No. 012, 28 Mar. 2019, MQ, Vol. VII, Ann. 171, paras. 10-11; Witness Declaration No. 018, 27 Mar. 2019, MQ, Vol. VII, Ann. 173, para. 12; Witness Declaration No. 020, 17 Apr. 2019, MQ, Vol. VII, Ann. 174, para. 15; Witness Declaration No. 029, 19 Mar. 2019, MQ, Vol. VII, Ann. 181, para. 10; Witness Declaration No. 030, 30 Jan. 2019, MQ, Vol. VII, Ann. 182, para. 18; Witness Declaration No. 036, 2 Apr. 2019, MQ, Vol. VIII, Ann. 185, para. 25; Witness Declaration No. 037, 6 Mar. 2019, MQ, Vol. VIII, Ann. 186, paras. 12-17; Witness Declaration No. 041, 24 Mar. 2019, MQ, Vol. VIII, Ann. 189, paras. 13-14; Witness Declaration No. 046, 19 Mar. 2019, MQ, Vol. VIII, Ann. 191, para. 19; Witness Declaration No. 047, 8 Apr. 2019, MQ, Vol. VIII, Ann. 192, para. 17; Witness Declaration No. 048, 31 Jan. 2019, MQ, Vol. VIII, Ann. 193, para. 24; Witness Declaration No. 051, 27 Mar. 2019, MQ, Vol. VIII, Ann. 194, para. 10; Witness Declaration No. 053, 21 Mar. 2019, MQ, Vol. VIII, Ann. 195, para. 9; Witness Declaration No. 056, 18 Mar. 2019, MQ, Vol. VIII, Ann. 196, para. 29; Witness Declaration No. 058, 4 Apr. 2019, MQ, Vol. VIII, Ann. 197, para. 9; Witness Declaration No. 080, 17 Mar. 2019, MQ, Vol. IX, Ann. 207, para. 26; Witness Declaration No. 086, 21 Mar. 2019, MQ, Vol. IX, Ann. 211, para. 13; Witness Declaration No. 092, 27 Mar. 2019, MQ, Vol. IX, Ann. 215, para. 14; Witness Declaration No. 093, 29 Jan. 2019, MQ, Vol. IX, Ann. 216, paras. 28-29; Witness Declaration No. 096, 27 Mar. 2019, MQ, Vol. IX, Ann. 217, para. 22; Witness Declaration No. 097, 31 Mar. 2019, MQ, Vol. IX, Ann. 218, para. 18; Witness Declaration No. 098, 27 Mar. 2019, MQ, Vol. IX, Ann. 219, para. 17; Witness Declaration No. 100, 14 Mar. 2019, MQ, Vol. IX, Ann. 220, para. 21; Witness Declaration No. 108, 7 Feb. 2019, MQ, Vol. IX, Ann. 224, paras. 19-20; Witness Declaration No. 123, 3 Apr. 2019, MQ, Vol. X, Ann. 229, para. 12; Witness Declaration No. 124, 25 Mar. 2019, MQ, Vol. X, Ann. 230, paras. 24-25; Witness Declaration No. 135, 31 Jan. 2019, MQ, Vol. X, Ann. 234, paras. 23-24; Witness Declaration No. 145, 20 Mar. 2019, MQ, Vol. X, Ann. 240, para. 18; Witness Declaration No. 161, 31 Mar. 2019, MQ, Vol. XI, Ann. 247, para. 25; Witness Declaration No. 167, 11 Mar. 2019, MQ, Vol. XI, Ann. 252, para. 18; Witness Declaration No. 174, 3 Apr. 2019, MQ, Vol. XI, Ann. 258, para. 15; Witness Declaration No. 177, 2 Apr. 2019, MQ, Vol. XI, Ann. 260, para. 16; Witness Declaration No. 179, 4 Apr. 2019, MQ, Vol. XI, Ann. 262, para. 12; Witness Declaration No. 183, 3 Apr. 2019, MQ, Vol. XII, Ann. 266, para. 14; Witness Declaration No. 188, 4 Apr. 2019, MQ, Vol. XII, Ann. 270, para. 11.

¹⁰⁷ See e.g. Witness Declaration No. 011, 31 Mar. 2019, MQ, Vol. VII, Ann. 170, para. 19; Witness Declaration No. 036, 2 Apr. 2019, MQ, Vol. VIII, Ann. 185, para. 25.

permit¹⁰⁸. Tellingly, the same witness added: “Before 5 June 2017, I could travel freely to the UAE.”¹⁰⁹

16. Indeed, these accounts paint a picture of individuals who are perhaps used to visa-free travel¹¹⁰. But all these anecdotes do is confirm that the UAE has done nothing more than reimpose regular border-entry requirements and formalities. This is not a breach of the Court’s Order with respect to family reunification.

17. Qatar’s NHRC also states that complainants have “not found a clear mechanism”¹¹¹ to enter the UAE. But Qatar is well-aware that this statement is baseless: Professor Sarooshi has explained that Qatar itself is blocking the website that provides a mechanism for Qatari citizens to return to the UAE. In fact, Qatar itself has recognized as much in this proceeding¹¹².

18. Third, on slide 25, the NHRC alleges that “the UAE have violated . . . the rights of Qatari citizens to access . . . the Emirati Judiciary”¹¹³. However, the information on slide 26, and at tab 19, shows that Qatari citizens after June 2017 still appeared in numerous UAE lawsuits and regularly issued powers of attorney¹¹⁴.

B. The falsehoods of Qatar’s NHRC Report have been propagandized by its aggressive media campaign

19. The false accusations made by Qatar against the UAE deepen the rift between the Parties and perpetuate and inflame this dispute. Through its Report, the NHRC misleads Qatar’s own citizens and discourages them from applying for travel permits for the UAE. And Qatari-owned

¹⁰⁸ See e.g. Witness Declaration No. 012, 28 Mar. 2019, MQ, Vol. VII, Ann. 171, paras. 10-11.

¹⁰⁹ Witness Declaration No. 012, 28 Mar. 2019, MQ, Vol. VII, Ann. 171, para. 11.

¹¹⁰ See e.g. Witness Declaration No. 053, 21 Mar. 2019, MQ, Vol. VIII, Ann. 195, para. 10; Witness Declaration No. 093, 29 Jan. 2019, MQ, Vol. IX, Ann. 216, para. 14; Witness Declaration No. 098, 27 Mar. 2019, MQ, Vol. IX, Ann. 219, para. 10.

¹¹¹ NHRC Report, p. 682.

¹¹² See Letter from the President of the Communications Regulatory Authority of the State of Qatar to H.E. Dr. Mohammed Abdulaziz Al-Khulaifi, Legal Advisor to H.E. Deputy Prime Minister and Minister for Foreign Affairs, 30 Apr. 2019, Documents submitted by Qatar on 30 April 2019 in the context of the UAE’s request for provisional measures, Ann. 33, para. 6.

¹¹³ See NHRC Report, p. 681.

¹¹⁴ See Letter from Nadia Abdullah Al-Alei (Director of the International Cooperation Department) to Abdel Rahman Murad Al-Beloushi (Director of the International Judicial Cooperation Department of the Ministry of Justice), POUAE, Vol. II, Ann. 13, p. 157.

media companies, including the *Qatar Tribune*, *The Peninsula*, *Al-Watan* and Al Jazeera, have broadcast these misrepresentations far and wide and in inflammatory tones¹¹⁵.

20. As we turn to slide 27, you will see that Al Jazeera quoted the NHRC decrying the UAE's mitigation measures on the very day that they were introduced¹¹⁶. Qatar's NHRC claimed that the UAE was engaged in a "face-saving exercise . . . too vague to have any practical impact"¹¹⁷.

21. And Qatar's media strategy has been effective in Qatar. I ask the Court to consider slide 28, containing a witness statement submitted by Qatar with its Memorial. The witness states:

"I heard about the Emirati 'hotline' on Emirati TV channels after 5 June 2017. The Qataris with whom I have spoken do not believe that the hotline actually works. I have not tried myself because, in my opinion, this sounds like a measure that the UAE have adopted to *save face* for diplomatic purposes."¹¹⁸ (Emphasis added.)

22. All this does is demonstrate that Qatar's propaganda has been successful. It does not, however, prove that the hotline does not work.

23. These Qatari media pieces adopt the aggressive and militaristic language of Qatar's Government and the NHRC. For example, they refer to the UAE entry permit requirements as a "siege" and a "blockade"¹¹⁹. But a State requiring prior approval for non-citizens wanting to visit does not constitute a "siege". A member of the UAE's legal team required a visa to attend this hearing. This does not mean that the Netherlands or the Schengen group of States have placed that person's country of nationality under siege. Calling it a "siege" would be aggressive and provocative.

24. Summing up, the right to free travel and economic union between GCC States is not protected by the CERD. Nonetheless, Qatar's submissions in its Memorial confirm that it is not the

¹¹⁵ See "UAE continues to violate ICJ decision", *Qatar Tribune*, 24 Jan. 2019, RPMUAE, Ann. 19; "'745' Emirati violations of ICJ decisions", *Al-Watan*, 24 Jan. 2019, RPMUAE, Ann. 27; "NHRC unveils report detailing continued rights violation by UAE despite ICJ decision", *The Peninsula*, 24 Jan. 2019, RPMUAE, Ann. 28; "Despite the ICJ Order . . . Qatari accounts document Emirati violations", *Al Jazeera*, 24 Jan. 2019, RPMUAE, Ann. 29.

¹¹⁶ "Qatar: Hotline for mixed families a face-saving act", *Al Jazeera*, 11 June 2017, RPMUAE, Ann. 18.

¹¹⁷ *Ibid.*

¹¹⁸ Witness Declaration No. 056, 18 Mar. 2019, MQ, Vol. VIII, Ann. 196, para. 29.

¹¹⁹ "Qatar: Hotline for mixed families a face-saving act", *Al Jazeera*, 11 June 2017, RPMUAE, Ann. 18; "Al Marri calls for extensive probe against siege nations", *The Peninsula*, 16 Sept. 2018, RPMUAE, Ann. 23; "Marri urges international community to pressure siege countries to stop human rights violations", *Qatar Tribune*, 30 Sept. 2018, RPMUAE, Ann. 24; "UN probes siege violations of Qatari students' rights", *The Peninsula*, 20 Jan. 2019, RPMUAE, Ann. 25; "Report on UAE violations next month, says al-Marri", *Gulf Times*, 6 Dec. 2018, RPMUAE, Ann. 26; AQ, para. 13.

resolution of a CERD complaint it seeks but a return to a time of union within the GCC community. It brings this proceeding not to protect the rights of vulnerable individuals, but, as Qatar itself admits, preponderantly in its own interest¹²⁰.

C. Qatar has orchestrated the anti-UAE campaign conducted through its NHRC and Qatari media

25. The aggressive misrepresentations made by the NHRC against the UAE are the direct responsibility of the Government of Qatar. Qatar's NHRC is constituted by decree of Qatar's Emir¹²¹. It is funded exclusively by the State and staffed by Qatari ministry representatives and civil society members who are individually hand-picked by the Emir¹²². And indeed, civil society organizations have frequently criticized Qatar's NHRC for failing to maintain sufficient distance from the Government of Qatar¹²³.

26. Qatar also controls the media relied upon by the NHRC to disseminate its inflammatory anti-UAE statements. Al Jazeera is established by decree of the Emir of Qatar¹²⁴. The Qatari Emir allocates Al Jazeera's funding from the State, appoints its Chairman, issues its bylaws and determines all aspects of its corporate functioning¹²⁵. The paper *Al-Watan* is half-owned by a

¹²⁰ MQ, paras. 4.11 and 4.21-4.26.

¹²¹ See Qatar, Decree-Law No. 38 of 2002 on the setting up of the National Human Rights Committee, 11 Nov. 2002, available at: <http://nhrc-qa.org/en/decree-law-no-38-of-2002-on-the-setting-up-of-the-national-human-rights-committee/>.

¹²² See Qatar, Decree-Law No. 38 of 2002 on the setting up of the National Human Rights Committee, 11 Nov. 2002, available at: <http://nhrc-qa.org/en/decree-law-no-38-of-2002-on-the-setting-up-of-the-national-human-rights-committee/>. See also Qatar, Decree-Law No. 17 of 2010 on the Organization of the National Human Rights Committee (NHRC), available at: <http://nhrc-qa.org/en/decree-law-no-17-of-2010-on-the-organization-of-the-national-human-rights-committee-nhrc/>; International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, "Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)", 16-20 Nov. 2015, p. 37, available at: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20NOVEMBER%202015-English.pdf>.

¹²³ See United Nations General Assembly, "Summary of Stakeholders' submission on Qatar: Report of the Office of the United Nations High Commissioner for Human Rights", Human Rights Council, Working Group on the Universal Periodic Review, 33rd Session, UN doc. A/HRC/WG.6/33/QAT/3, 21 Feb. 2019, para. 25, available at: <https://undocs.org/A/HRC/WG.6/33/QAT/3>.

¹²⁴ See Qatar, Law No. 10 of 2011 on the Conversion of Al Jazeera Satellite Network to a Private Corporation for the Public Benefit, 18 May 2011, available at: <http://almeezan.qa/LawPage.aspx?id=2471&language=en>.

¹²⁵ See Qatar, Law No. 10 of 2011 on the Conversion of Al Jazeera Satellite Network to a Private Corporation for the Public Benefit, available at: <http://almeezan.qa/LawPage.aspx?id=2471&language=en>; Qatar, Law No. 21 of 2006 regarding Private Foundations for the Public Benefit, Article 3, available at: <http://almeezan.qa/LawPage.aspx?id=2697&language=en>. See also Memorandum and Articles of Association of Al Jazeera Media Network, 3 July 2011, RPMUAE, Ann. 32, Articles 4, 5, 17, 18, 24 and 26 of the Articles of Association.

former Qatari Prime Minister. And the Chairman of *Al-Watan*, as well as the Chairman and the Managing Director of *The Peninsula*, are all members of the Qatari royal family¹²⁶.

27. The Government of Qatar itself has formally represented to its neighbours that it directs the content of its media outlets. When signing the Riyadh Agreements, found at tabs 1 to 3 of your folders, Qatar committed its media to refrain from discussing certain subjects or offering support to the Muslim Brotherhood¹²⁷. Qatar explicitly confirmed that this applied to Al Jazeera¹²⁸. This is an acknowledgement, in legally binding agreements, that Qatar exercises editorial control over Al Jazeera and other Qatari media.

D. The Court has the powers to indicate the requested provisional measures to preserve the UAE's rights and avoid aggravation of the dispute

28. Mr. President, the UAE requests specific measures of protection against Qatar's extrajudicial attempts at coercion, which is directly linked to this proceeding. It is within the Court's powers to indicate such measures¹²⁹.

29. Qatar deploys its NHRC and its propaganda media to publicize allegations that the UAE has breached this Court's Provisional Measures Order as if those allegations were proven facts. No less than two weeks ago, Qatar submitted a formal request for this Court to examine the UAE's compliance with the Court's Order. But months prior to that, Qatar's NHRC had already arrogated this Court's fact-finding function by issuing and aggressively propagating its unverified and defamatory Report. Qatar's actions have caused the UAE to suffer the same significant reputational harm as if Qatar's allegations had actually been established by this Court¹³⁰.

¹²⁶ See *Al-Watan* company profile on Omnes Media website, available at: <https://www.omnesmedia.com/en/company/al-watan-4/profile> (Hamad bin Jassim bin Jaber Al Thani; Hamad bin Sahim Al Thani). See also Anti-Defamation League, *Arab Media Review (July-December 2010)*, 2011, p. 37, available at: https://web.archive.org/web/20120119200951/http://www.adl.org/Anti_semitism/arab/arab-media-review-July-December2010.pdf. See also "About Us", *The Peninsula*, available at: <https://www.thepeninsulaqatar.com/about>; "Dr Sheikh Khalid bin Thani Al Thani", *Qatari Businessmen Association*, available at: <http://www.qataribusinessmen.org/eng/member.aspx?Name=103> (Thani bin Abdulla Al Thani; Khalid bin Thani Al Thani).

¹²⁷ Mechanism Implementing the Riyadh Agreement, Articles 1 and 2 (a), RPMUAE, Ann. 3.

¹²⁸ Supplementary Riyadh Agreement, Article 3 (d), RPMUAE, Ann. 4.

¹²⁹ See *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Provisional Measures, Order of 23 January 2007*, *I.C.J. Reports 2007 (I)*, p. 10, para. 28; *ibid.*, declaration of Judge Buergenthal, para. 11.

¹³⁰ See P. Palchetti, "Responsibility for breach of provisional measures of the ICJ: Between protection of the rights of the parties and respect for the judicial function", 1 *Rivista di Diritto Internazionale* (2017) 5, p. 18.

30. This conduct causes prejudice to the UAE's right to a fair adjudication, which should be protected *pendente lite*. The situation is similar to that described by Professor Sarooshi: the NHRC statements risk creating a self-fulfilling prophecy, deterring Qatari citizens from exercising their rights and creating the effects invoked by Qatar in support of its claim before the Court. These statements aggravate and extend the dispute. This is a *malum in se* against which the UAE is entitled to seek protection¹³¹.

31. As a result, the Court should indicate provisional measures requiring Qatar to stop disseminating false accusations regarding the UAE and the issues in dispute before this Court.

32. Mr. President, Honourable Members of the Court, this concludes my submissions. I thank you for your attention and I ask that you please give the floor once again to Professor Volterra.

The PRESIDENT: I thank Dr. Fogdestam-Agius and I will now invite Professor Volterra to take the floor. You have the floor.

M. VOLTERRA :

**VI. QUATRIÈME MESURE CONSERVATOIRE : QUE LE QATAR S'ABSTIENNE DE TOUT ACTE
QUI RISQUERAIT D'AGGRAVER LE DIFFÉREND OU D'EN RENDRE LE RÈGLEMENT
PLUS DIFFICILE**

A. Remarques préliminaires

1. Monsieur le président, Mesdames et Messieurs les juges, je suis sensible à l'honneur qu'il m'est fait d'introduire à présent la quatrième mesure conservatoire demandée par les Emirats arabes unis (ci-après «Emirats»).

2. Il est fort regrettable de constater que le Qatar ne semble avoir aucunement l'intention de parvenir à un règlement du différend qui oppose les deux Parties. Au contraire, depuis le prononcé de votre ordonnance du 23 juillet 2018, le Qatar a pris une série de mesures qui sont en violation de

¹³¹ See H. Thirlway, *The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence*, Vol. II, (Oxford University Press, 2013), p. 1800. See also *Frontier Dispute (Burkina Faso/Republic of Mali), Provisional Measures, Order of 10 January 1986, I.C.J. Reports 1986*, pp. 22-23, para. 18; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Provisional Measures, Order of 15 March 1996, I.C.J. Reports 1996 (I)*, pp. 22-23, para. 41.

cette ordonnance et ~~qui~~ constituent une aggravation incontestable du différend. Un certain nombre de ces mesures vous ont été exposées aujourd'hui.

3. Ce constat ressort de trois éléments. Premièrement, l'aggravation résulte de la réintroduction par le Qatar de sa communication pendante devant le Comité pour l'élimination de la discrimination raciale (ci-après «Comité CEDR»); deuxièmement, elle résulte du blocage du site Internet permettant aux citoyens qataris d'obtenir un visa pour retourner sur le territoire des Emirats; et troisièmement, l'aggravation du différend est provoquée par la diffusion massive par le Qatar de discours provocateurs et de fausses informations contre les Emirats. Je vais les évoquer assez brièvement, dans le cadre de la quatrième mesure conservatoire demandée par les Emirats.

B. La réintroduction par le Qatar de sa communication devant le Comité CEDR compromet sérieusement les chances de pouvoir résoudre le différend

4. Le 29 octobre 2018, le Qatar a réintroduit sa communication pendante devant le Comité CEDR, alors qu'il avait déjà préalablement introduit sa requête devant la Cour le 11 juin 2018. Ce volte-face de la part du Qatar, qui aboutit aujourd'hui à l'existence de deux procédures contentieuses parallèles, et ce, au mépris total des règles de la convention internationale sur l'élimination de la discrimination raciale relatives à la résolution des différends¹³², est le premier élément d'aggravation du différend par le Qatar.

5. Les développements relatifs à l'engagement de ces deux procédures parallèles ont déjà été exposés par le professeur Reisman. Je ne juge pas nécessaire ici de les reprendre en détail.

6. Néanmoins, je souhaite attirer votre attention sur les conséquences dommageables qu'entraîne, pour la résolution du différend, la réouverture abusive de la procédure devant le Comité CEDR par le Qatar.

7. Comme l'a rappelé le professeur Reisman, il existe un risque élevé que la procédure engagée devant votre Cour et celle engagée devant le Comité CEDR aboutissent à deux résultats contradictoires. En effet, les opinions dissidentes rendues dans votre ordonnance du 23 juillet 2018 ont mis en lumière l'existence d'une divergence profonde entre de nombreux juges de la Cour — peut-être même partagée par toute la Cour — et le Comité CEDR. Cette divergence profonde

¹³² Voir convention internationale sur l'élimination de toutes les formes de discrimination raciale (ci-après «CIEDR»), 21 décembre 1965, art. 22.

porte sur la question fondamentale de savoir si la CIEDR couvre, ou non, les différences de traitement basées sur la nationalité¹³³. Si cette divergence venait à se matérialiser, l'arrêt de la Cour ne mettrait donc pas fin au différend entre les deux Parties. En outre, l'existence de ces deux procédures parallèles va à l'encontre du droit à l'équité procédurale des Emirats. La réintroduction par le Qatar de sa communication pendante devant le Comité CEDR compromet donc sérieusement les chances de pouvoir résoudre le différend entre les Parties.

C. L'attitude du Qatar entrave les efforts déployés par les Emirats permettant aux citoyens qataris de retourner sur le territoire émirati

8. J'en viens maintenant, Monsieur le président, au deuxième élément d'aggravation de la part du Qatar, à savoir l'entrave du Qatar aux efforts déployés par les Emirats pour faciliter le retour des citoyens qataris sur le territoire émirati.

9. Comme cela a été exposé par le professeur Sarooshi, les Emirats ont mis en place, le 11 juin 2017, une assistance téléphonique permettant aux citoyens qataris de demander un visa pour entrer sur le territoire des Emirats. Par la suite, les Emirats ont également mis en place une procédure spéciale, sur le site Internet officiel, de demandes de visas pour les citoyens qataris souhaitant retourner sur le territoire émirati. Or le Qatar a bloqué l'accès au site Internet sur son territoire, comme vous avez pu le voir sur les vidéos et comme le Qatar l'a reconnu lui-même au cours de cette procédure¹³⁴. Par ce blocage, Monsieur le président, le Qatar court-circuite ainsi la procédure de visas qui avait été mise en œuvre par les Emirats, et ce, au détriment même des citoyens qataris.

10. Mais le blocage du site Internet par le Qatar est encore plus pervers que cela. Il constitue en effet une véritable manipulation des preuves par le Qatar. Comme le professeur Sarooshi l'a rappelé précédemment, un des arguments clés du Qatar consiste à accuser les Emirats d'interdire

¹³³ Voir *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Qatar c. Emirats arabes unis), mesures conservatoires, ordonnance du 23 juillet 2018* (ci-après «ordonnance du 23 juillet 2018»), déclaration commune de MM. les juges Tomka, Gaja et Gevorgian, p. 436, par. 5 ; *ibid.*, opinion dissidente de M. le juge Crawford (ci-après «opinion dissidente de M. le juge Crawford»), p. 475, par. 1 ; *ibid.*, opinion dissidente de M. le juge Salam, p. 481-483, par. 2-8.

¹³⁴ Voir Letter from the President of the Communications Regulatory Authority of the State of Qatar to His Excellency Dr Mohammed Abdulaziz Al-Khulaifi, Legal Advisor to His Excellency Deputy Prime Minister and Minister of Foreign Affairs, 30 avril 2019, documents déposés par le Qatar le 30 avril 2019 dans le cadre de la demande en indication de mesures conservatoires présentée par les EMIRATS du 22 mars 2019, par. 6, annexe 33.

aux citoyens qataris d'entrer sur son territoire¹³⁵. En effet, que ce soit dans son mémoire (ci-après «MQ») ou dans ses conclusions antérieures, le Qatar accuse sans cesse les Emirats d'avoir pris des mesures d'«interdiction de voyager» envers les citoyens du Qatar¹³⁶. Alors oui, il est plus facile pour le Qatar d'accuser les Emirats d'empêcher ses citoyens de se rendre sur le territoire émirati si, dans le même temps, le Qatar se débarrasse du système de demandes de visas spécifiquement mis en place par les Emirats pour permettre aux citoyens qataris *de* retourner *aux Emirats*. Le blocage du site Internet est en effet d'autant plus préjudiciable pour ces citoyens qataris puisque les Emirats n'ont pas de consulat au Qatar qui leur permettrait de faire des demandes de visas sur place. En conséquence, il devient en pratique très *difficile* pour les citoyens qataris d'obtenir le visa nécessaire à cause des actes du Qatar. Et puis c'est encore plus difficile pour eux de retourner sur le territoire émirati. Le Qatar semble juste omettre de préciser que c'est *lui*, le Qatar, qui est derrière *toutes* ces difficultés.

11. En outre, les accusations répétées du Qatar dans ses conclusions concernant les soi-disant mesures d'«interdiction de voyager» prises par les Emirats sont montées de toute pièce. En effet, ces accusations ne sont pas chiffrées, elles ne reposent sur aucune preuve et sont par ailleurs contredites par les faits de l'espèce. Contrairement à ce qu'affirme le Qatar, les Emirats n'ont jamais mis en œuvre les mesures annoncées au paragraphe 2 de la déclaration de juin 2017. D'ailleurs, M. le juge Crawford a lui-même indiqué dans son opinion dissidente :

«Il ne ressort pas clairement du dossier que des personnes continuent de souffrir de ces conséquences [celles de la déclaration de juin 2017] en ce mois de juillet 2018. ... Le dernier rapport (le cinquième) du comité qatarien des droits de l'homme ne fait que reprendre les conclusions formulées dans les rapports antérieurs d'autres organisations de défense des droits de l'homme, sans désigner de cas précis dans lequel des Qatariens auraient été forcés à quitter le territoire émirien au cours des derniers mois.»¹³⁷

¹³⁵ Voir ordonnance du 23 juillet 2018, par. 19.

¹³⁶ Voir MQ du 25 avril 2019, par. 2.26-2.35. Voir aussi la requête introductive d'instance du Qatar (ci-après «RQ») du 11 juin 2018, par. 32 et 64.

¹³⁷ Voir l'ordonnance du 23 juillet 2018, opinion dissidente de M. le juge Crawford, par. 9. Voir aussi l'opinion dissidente de M. le juge Bhandari, p. 471, par. 3-4.

12. Bien au contraire, entre le 5 juin 2017 et le 31 décembre 2018, les citoyens qataris ont pu entrer ou sortir des Emirats arabes unis par milliers¹³⁸. Les Emirats ont notamment clarifié leur position par une nouvelle déclaration en date du 5 juillet 2018. Selon cette déclaration, les Emirats ont indiqué qu'il n'est pas nécessaire pour les citoyens qataris résidant déjà sur le territoire émirati de demander une autorisation pour pouvoir y demeurer. D'autre part, selon cette déclaration, tous les citoyens qataris qui résident aux Emirats sont encouragés à obtenir une autorisation préalable lorsqu'ils souhaitent entrer à nouveau sur le territoire des Emirats¹³⁹.

13. Le Qatar est au courant de tous ces développements. Dans son mémoire du 25 avril 2019, le Qatar fournit d'ailleurs plusieurs déclarations de témoins qui révèlent que des citoyens qataris ont bien pu se rendre sur le territoire des Emirats¹⁴⁰. Le Qatar est donc bien conscient que ses accusations sont manifestement fausses. Nul doute, donc, que la Cour saura apprécier à sa juste valeur cette tentative délibérée du Qatar de présenter de fausses accusations comme des faits avérés.

14. Le blocage du site Internet par le Qatar vient donc perturber, à dessein, les efforts mis en œuvre par les Emirats dans ce litige, et entraîne donc de graves conséquences pour la suite du différend.

D. Le Qatar doit cesser de manière imminente la diffusion de discours provocateurs et mensongers contre les Emirats

15. J'en arrive maintenant à mon troisième point, Monsieur le président, à savoir la diffusion massive par le Qatar de discours provocateurs et mensongers dirigés contre les Emirats.

16. Monsieur le président, Mesdames et Messieurs de la Cour, depuis le prononcé de l'ordonnance de non-aggravation, le Qatar s'est livré à une véritable propagande contre les Emirats,

¹³⁸ Voir *State of Qatar v. United Arab Emirates*, Case No. ICERDISC-2018/2, Note Verbale from the Permanent Mission of the United Arab Emirates to the United Nations Office and Other International Organizations in Geneva to the Secretariat of the Office of the High Commissioner for Human Rights, transmitting the Supplemental Response on Issues of Jurisdiction and Admissibility of the United Arab Emirates, 14 janvier 2019, demande en indication de mesures conservatoires des Emirats arabes unis du 22 mars 2019 (ci-après «DMCEAU»), par. 8, annexe 31.

¹³⁹ Voir ministère des affaires étrangères des Emirats, «An official Statement by the UAE Ministry of Foreign Affairs and International Cooperation», 5 juillet 2018, consultable à l'adresse : <https://www.mofa.gov.ae/EN/TheMinistry/TheForeignMinisterWebsite/Pages/05-07-2018-UAE-Statement-of-MoFAIC.aspx>.

¹⁴⁰ Voir, par exemple, DCL-004 Witness Declaration No. 004 du 4 février 2019, mémoire du Qatar, vol. VII, annexe 165, par. 20 de la déclaration de témoin ; DCL-011 Witness Declaration No. 011 du 31 mars 2019, MQ, vol. VII, annexe 170, par. 16, 19-21 de la déclaration de témoin.

diffusée à travers ses médias (comme *Al Jazeera*, *Al Watan*, le *Qatar Tribune* ou *The Peninsula*) et à travers ses institutions.

17. En particulier, le Qatar met un point d'honneur à qualifier systématiquement les Emirats en termes agressifs et militaristes. Par exemple, selon les termes employés par le Qatar, les Emirats seraient une nation de siège¹⁴¹. Ce titre dont les Emirats se retrouvent ainsi affublés est évidemment faux et provocateur. Ce que le Qatar tente en réalité, Monsieur le président, c'est de faire croire à l'opinion publique non seulement que le Qatar et les Emirats seraient en guerre, mais plus grave encore, que le Qatar serait en état de siège par les Emirats, et donc sous la menace d'une invasion émiratie. Cela aussi est bien évidemment faux et hors de propos.

18. Dans la diffusion de cette propagande par le Qatar, la chaîne d'information *Al Jazeera*, et notamment la version en langue arabe *d'Al Jazeera*, joue un rôle clef, relayant sans aucun filtre ou esprit critique une multitude de fausses informations et d'accusations sans fondement. Selon ces informations, les Emirats «incitent au racisme» et «provoquent des actes de violence»¹⁴².

19. En vue de propager ces fausses informations, le Qatar n'a pas hésité non plus à utiliser la voix de son propre comité national des droits de l'homme (ci-après «NHRC»), comme cela a été indiqué précédemment par *Dr. Fogdestam-Agius*. Je voudrais de nouveau m'y attarder un instant, Monsieur le président.

20. Sur la base de prétendues preuves collectées par ce comité qatari dans plusieurs rapports (six en l'espace d'un an et demi), les Emirats auraient commis pas moins de 745 violations des droits de l'homme contre des citoyens qataris¹⁴³. Comme cela a été rappelé précédemment, le Qatar accuse, par exemple, les Emirats de mettre en œuvre des politiques de discrimination à l'égard des étudiants qataris scolarisés aux Emirats en leur interdisant soit-disant l'accès à son territoire¹⁴⁴.

¹⁴¹ Voir «Al-Marri calls for extensive probe against siege nations», *The Peninsula*, 16 septembre 2018, DMCEAU, annexe 23 ; «Marri urges international community to pressure siege countries to stop human rights violations», *Qatar Tribune*, 30 septembre 2018, DMCEAU, annexe 24 ; «UN probes siege violations of Qatari students' rights», *The Peninsula*, 20 janvier 2019, DMCEAU, annexe 25.

¹⁴² «Despite the ICJ Order . . . Qatari accounts document Emirati violations», *Al Jazeera*, 24 janvier 2019, p. 2, DMCEAU, annexe 29 (traduction anglaise de l'original en arabe).

¹⁴³ Voir ««745» Emirati violations of ICJ decisions», *Al Watan*, 24 janvier 2019, DMCEAU, annexe 27 ; «NHRC unveils report detailing continued rights violation by UAE despite ICJ decision», *The Peninsula*, 24 janvier 2019, DMCEAU, annexe 28.

¹⁴⁴ Voir, par exemple, «Al Marri calls for extensive probe against siege nations», *The Peninsula*, 16 septembre 2018, DMCEAU, annexe 23.

Mais comme la Cour l'a entendu il y a quelques instants, ces informations sont fausses. Elles sont fausses ! Et elles ont été démenties. Comme vous pouvez le voir dans votre dossier sous l'onglet n° 21, une université prestigieuse a, par exemple, dû émettre un communiqué de presse pour réfuter les allégations selon lesquelles un de ses étudiants aux Emirats se serait vu empêché de poursuivre sa scolarité du fait des mesures prises par les Emirats¹⁴⁵.

21. Monsieur le président, il me semble important à ce stade d'établir une évidence : ces rapports ne reposent en réalité sur aucune preuve. Ces rapports établis directement par le Qatar se contentent en effet de relater des faits qui n'ont été vérifiés par aucun organe indépendant, et qui ne sont pas vérifiables par les Emirats puisque la plupart de ces soi-disant preuves, qui lui ont été communiquées par le Qatar dans ces rapports, ont été anonymisées par le Qatar.

22. En outre, les allégations qui émanent de ces rapports — même les plus récents — font référence de manière générale à la déclaration des Emirats du 5 juin 2017¹⁴⁶, et ne sont donc là encore pas conformes à la réalité des faits. Comme cela a déjà été rappelé dans ces débats, les mesures annoncées en juin 2017 concernant le statut des citoyens qataris aux Emirats ne sont jamais entrées en vigueur, et le Qatar n'a jamais apporté d'élément de preuve contraire. Pas une seule preuve.

23. En outre, le message relayé par ces rapports établis par le Qatar est clair : les mesures prises par les Emirats seraient «arbitraires»¹⁴⁷, donc toutes les conséquences qui en découlent pour les citoyens qataris seraient des violations des droits de l'homme. Ce raisonnement est *faux* et traduit clairement un parti pris politique par le NHRC du Qatar. L'absence totale de référence aux activités terroristes financées et soutenues par le Qatar est en soi assez éloquente.

¹⁴⁵ Voir «Sorbonne University Abu Dhabi denies Qatari student's claims», *Gulf News*, 15 avril 2019, consultable à l'adresse : <https://gulfnews.com/uae/education/sorbonne-university-abu-dhabi-denies-qatari-students-claims-1.63329522>. Voir aussi Education — Undersecretary of Academic Affairs Email, documents déposés par les Emirats le 25 juin 2018 dans le cadre de la demande en indication de mesures conservatoires du 11 juin 2018 présentée par le Qatar, *exhibit 8*.

¹⁴⁶ ««745» Emirati violations of ICJ decisions», *Al Watan*, 24 janvier 2019, DMCEAU, p. 4 et 7, annexe 27, p. 3-8 (traduction anglaise de l'original en arabe).

¹⁴⁷ Voir, par exemple, Qatar's National Human Rights Committee, «Gulf Crisis: Continuing human rights violations by the United Arab Emirates, Report on the non-compliance by the United Arab Emirates with the Order of the International Court of Justice six months following its adoption», 23 janvier 2019, *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Qatar c. Emirats arabes unis), exceptions préliminaires des Emirats du 29 avril 2019* (ci-après «EPEAU»), vol. 4, annexe 156, p. 671-689.

24. Ce que ces rapports démontrent, en revanche, c'est que ce comité qatari des droits de l'homme est un outil de propagande du Qatar. Avec ces rapports produits par ce soi-disant comité des droits de l'homme, le Qatar nous fournit là encore un exemple assez saisissant de ses tentatives de fabrication de preuves et de distorsion de la réalité des faits.

25. Finalement, force est de constater que les discours provocateurs du Qatar et les fausses informations que ce dernier diffuse attisent davantage les tensions entre les Parties, alors que celles-ci sont déjà fortes. L'attitude du Qatar aggrave donc là aussi de manière directe et certaine le différend.

VII. CONCLUSION

26. Monsieur le président, Mesdames et Messieurs les juges, pour conclure j'aimerais brièvement rappeler à la Cour les raisons sous-jacentes qui animent ce différend.

27. Comme cela a été mentionné par l'agent des Emirats, le cœur de cette affaire concerne le financement et le soutien de longue date apporté au terrorisme par le Qatar. Le financement et le soutien du Qatar au terrorisme est notoire et bien documenté, et a été condamné à travers le monde entier. Plusieurs individus résidant actuellement au Qatar ont par ailleurs fait l'objet de sanctions de la part du Conseil de sécurité de l'ONU — le Conseil de sécurité de l'ONU ! — pour avoir financé et participé aux activités terroristes d'Al-Qaïda, entre autres¹⁴⁸. Il est donc prouvé — et cela me semble primordial de le rappeler à nouveau ici, Monsieur le président — que le Qatar donne aujourd'hui volontairement refuge à des terroristes notoires.

28. Malgré les nombreuses tentatives de dialogue engagées par la diplomatie émiratie et les autres pays du Golfe, et malgré la condamnation internationale de l'attitude du Qatar, ce dernier n'a pas changé sa politique proterrorisme d'un iota. Bien au contraire, le Qatar a fait le choix de rester aujourd'hui un soutien majeur et actif de nombreux groupes extrémistes et terroristes, à savoir Al-Qaïda, le Front al-Nosra, l'Etat islamique, et les Frères musulmans¹⁴⁹. Le Qatar a également

¹⁴⁸ Voir United Nations Security Council, ISIL (Da'esh) and Al-Qaïda Sanctions Committee, Narrative Summaries of Reasons for Listing Khalifa Muhammad Turki Al-Subai (QDi.253), 3 février 2016, EPEAU, vol. 2, p. 63-65, annexe 9 ; United Nations Security Council, Al-Qaïda Sanctions Committee, Narrative Summaries of Reasons for Listing Abdal-Latif bin Abdallah Salih Muhammad al-Kawari (QDi.380), 21 septembre 2015, EPEAU, vol. 2, p. 67-68, annexe 10 ; United Nations Security Council, Al-Qaïda Sanctions Committee, Narrative Summaries of Reasons for Listing Sa'd bin Sa'd Muhammad Shariyan al-Ka'bi (QDi.382), 21 septembre 2015, EPEAU, vol. 2, p. 69-70, annexe 11.

¹⁴⁹ Voir EPEAU, par. 24.

choisi de continuer à apporter un soutien majeur aux différentes milices soutenues par l'Iran, ainsi qu'à d'autres groupes terroristes actuellement actifs au Proche-Orient¹⁵⁰. Le Qatar agit de cette façon en violation directe de ses engagements souscrits dans les accords de Riyad.

29. Monsieur le président, Mesdames et Messieurs les juges, le soutien du Qatar à ces groupes terroristes entraîne des conséquences très graves. En finançant et soutenant le terrorisme, le Qatar détruit intentionnellement des vies, et nuit au bien-être de nombreuses populations vulnérables de la région du Golfe et d'autres régions, participant ainsi directement à la déstabilisation du Proche-Orient et du monde arabe. La politique proterrorisme de déstabilisation menée par le Qatar est la cause directe de la mort de nombreux civils au Yémen, en Syrie et dans d'autres pays.

30. Et les moyens de propagande dont le Qatar dispose pour mener cette politique sont conséquents. Les médias du Qatar, notamment Al Jazeera en langue arabe, sont un relais puissant de cette propagande. Al Jazeera a en effet fait preuve d'une inimitié sans faille envers les Emirats. Il accable les Emirats avec une accumulation de contre-vérités et un langage agressif et militariste. Les Emirats seraient une nation hostile, faisant fi de tout humanisme en empêchant la réunification des familles mixtes ou encore en incitant au racisme et à la violence envers les citoyens qataris, selon Al Jazeera¹⁵¹.

31. Les Emirats sont aujourd'hui la proie de ces fausses accusations parce qu'ils se sont opposés à la politique proterrorisme du Qatar. Car c'est bien face à cette menace terroriste que les Emirats arabes unis ont décidé d'agir concrètement, en prenant un ensemble de mesures contre le Gouvernement du Qatar.

32. Monsieur le président, Mesdames et Messieurs de la Cour, voilà brièvement le contexte sous-jacent dans lequel les Emirats arabes unis demandent aujourd'hui à la Cour de prononcer des mesures conservatoires. C'est un contexte sensible, marqué par des questions de sécurité internationale, dans lequel la perspective d'une aggravation du différend entre les Parties n'est pas une option envisageable.

¹⁵⁰ Voir EPEAU, par. 24.

¹⁵¹ Voir «Despite the ICJ Order ... Qatari accounts document Emirati violations», Al Jazeera, 24 janvier 2019, DMCEAU, annexe 29 (traduction anglaise de l'original en arabe).

33. Monsieur le président, Mesdames et Messieurs de la Cour, ceci conclut le premier tour des plaidoiries du défendeur. Je vous remercie vivement de votre attention.

The PRESIDENT: I thank Mr. Volterra. With your statement, we come to the end today of the first round of oral observations of the United Arab Emirates. The Court will meet tomorrow morning, 8 May, at 10 a.m., to hear the first round of oral observations of the State of Qatar. The sitting is adjourned.

The Court rose at 1 p.m.
