

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

APPLICATION
OF THE INTERNATIONAL CONVENTION
ON THE ELIMINATION OF ALL FORMS
OF RACIAL DISCRIMINATION

(QATAR *v.* UNITED ARAB EMIRATES)

PRELIMINARY OBJECTIONS

JUDGMENT OF 4 FEBRUARY 2021

2021

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

APPLICATION
DE LA CONVENTION INTERNATIONALE
SUR L'ÉLIMINATION DE TOUTES LES FORMES
DE DISCRIMINATION RACIALE

(QATAR *c.* ÉMIRATS ARABES UNIS)

EXCEPTIONS PRÉLIMINAIRES

ARRÊT DU 4 FÉVRIER 2021

Official citation:

*Application of the International Convention
on the Elimination of All Forms of Racial Discrimination
(Qatar v. United Arab Emirates), Preliminary Objections, Judgment,
I.C.J. Reports 2021, p. 71*

Mode officiel de citation :

*Application de la convention internationale
sur l'élimination de toutes les formes de discrimination raciale
(Qatar c. Emirats arabes unis), exceptions préliminaires, arrêt,
C.I.J. Recueil 2021, p. 71*

ISSN 0074-4441
ISBN 978-92-1-003883-6

Sales number
N° de vente:

1221

© 2022 ICJ/CIJ, United Nations/Nations Unies
All rights reserved/Tous droits réservés

Printed in France/Imprimé en France

4 FEBRUARY 2021

JUDGMENT

APPLICATION
OF THE INTERNATIONAL CONVENTION
ON THE ELIMINATION OF ALL FORMS
OF RACIAL DISCRIMINATION

(QATAR *v.* UNITED ARAB EMIRATES)

PRELIMINARY OBJECTIONS

APPLICATION
DE LA CONVENTION INTERNATIONALE
SUR L'ÉLIMINATION DE TOUTES LES FORMES
DE DISCRIMINATION RACIALE

(QATAR *c.* ÉMIRATS ARABES UNIS)

EXCEPTIONS PRÉLIMINAIRES

4 FÉVRIER 2021

ARRÊT

TABLE OF CONTENTS

	<i>Paragraphs</i>
CHRONOLOGY OF THE PROCEDURE	1-25
I. INTRODUCTION	26-40
A. Factual background	26-34
B. The jurisdictional basis invoked and the preliminary objections raised	35-40
II. SUBJECT-MATTER OF THE DISPUTE	41-70
III. FIRST PRELIMINARY OBJECTION: JURISDICTION <i>RATIONE MATERIAE</i>	71-114
A. The question whether the term “national origin” encompasses current nationality	74-105
1. The term “national origin” in accordance with its ordinary meaning, read in its context and in the light of the object and purpose of CERD	78-88
2. The term “national origin” in the light of the <i>travaux préparatoires</i> as a supplementary means of interpretation	89-97
3. The practice of the CERD Committee	98-101
4. The jurisprudence of regional human rights courts	102-104
5. Conclusion on the interpretation of the term “national origin”	105
B. The question whether the measures imposed by the UAE on certain Qatari media corporations come within the scope of the Convention	106-108
C. The question whether the measures that Qatar characterizes as “indirect discrimination” against persons of Qatari national origin fall within the scope of the Convention	109-113
D. General conclusion	114
OPERATIVE CLAUSE	115

INTERNATIONAL COURT OF JUSTICE

YEAR 2021

2021
4 February
General List
No. 172

4 February 2021

APPLICATION
OF THE INTERNATIONAL CONVENTION
ON THE ELIMINATION OF ALL FORMS
OF RACIAL DISCRIMINATION

(QATAR *v.* UNITED ARAB EMIRATES)

PRELIMINARY OBJECTIONS

Factual background.

Measures announced by the United Arab Emirates (“UAE”) on 5 June 2017 — Severance of diplomatic relations with Qatar — Entry ban — Travel bans — Expulsion order — Closure by UAE of airspace and seaports — Additional measures relating to Qatari media corporations and speech in support of Qatar — Communication of Qatar submitted to the Committee on the Elimination of Racial Discrimination (“CERD Committee”) on 8 March 2018 — Decisions on jurisdiction and admissibility of inter-State communication given by the CERD Committee on 27 August 2019 — CERD Committee rejects preliminary exceptions raised by the UAE — Appointment of an ad hoc Conciliation Commission.

*

Jurisdictional basis invoked and preliminary objections raised.

*Article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”) — Preliminary objection to jurisdiction *ratione materiae* — Preliminary objection based on alleged failure to satisfy procedural preconditions of Article 22 of CERD.*

*

Subject-matter of the dispute.

Applicant required to indicate subject-matter of dispute in its application — Court itself determines subject-matter of dispute on objective basis.

Qatar makes three claims of racial discrimination — First claim arising out of travel bans and expulsion order — Second claim arising from restrictions on Qatari media corporations — Third claim that measures taken result in “indirect discrimination” on the basis of Qatari national origin.

Claim arising out of travel bans and expulsion order — Qatar’s contention that express reference to Qatari nationals constitutes discrimination on basis of current nationality — UAE’s argument that such differentiation based on nationality does not violate CERD — Parties hold opposing views on whether the term “national origin” in Article 1, paragraph 1, of CERD encompasses current nationality.

Claim arising from restrictions on Qatari media corporations — Disagreement on whether measures directly targeted those corporations in a racially discriminatory manner.

Claim of “indirect discrimination” against persons of Qatari national origin — Qatar’s assertion that expulsion order and travel bans give rise to “indirect discrimination” — Qatar’s allegations that restrictions on media corporations and limitations on freedom of expression result in “indirect discrimination” — UAE’s contention that claim was not presented in Application — Rules of Court do not preclude Qatar from refining the legal arguments presented in its Application or advancing new arguments — Parties hold opposing views over Qatar’s claim that UAE has engaged in “indirect discrimination”.

Conclusion that the Parties disagree in respect of Qatar’s three claims that UAE has violated its obligations under CERD — Parties’ disagreements in respect of these claims form the subject-matter of the dispute.

*

*First preliminary objection: jurisdiction *ratione materiae*.*

Question whether term “national origin” encompasses current nationality — Interpretation of “national origin” in Article 1, paragraph 1, of CERD on the basis of Article 31 and 32 of the Vienna Convention on the Law of Treaties — Ordinary meaning of term “national origin” does not encompass current nationality — Context in which term used in CERD, in particular paragraphs 2 and 3 of Article 1, supports ordinary meaning — Ordinary meaning also supported by object and purpose of CERD — The term “national origin”, in accordance with its ordinary meaning, read in its context and in light of object and purpose of CERD, does not encompass current nationality — Travaux préparatoires confirm this interpretation — Practice of the CERD Committee — General Recommendation XXX — Careful consideration by Court of position taken by CERD Committee therein — Court’s conclusion reached using relevant rules of treaty interpretation — Jurisprudence of regional human rights courts of little help — Conclusion that the

term “national origin” does not encompass current nationality — First claim consequently does not fall within scope of CERD.

Question whether measures imposed on Qatari media corporations come within scope of CERD — Convention concerns only individuals or groups of individuals — Reference to “institutions” in Article 2, paragraph 1 (a), does not include media corporations — Second claim, which relates to media corporations, does not fall within scope of CERD.

Question whether “indirect discrimination” falls within scope of CERD — Whether measures capable of falling within scope of CERD if, by their purpose or effect, they result in racial discrimination against persons on the basis of their Qatari national origin — Collateral or secondary effects on persons born in Qatar or of Qatari parents, or on family members of Qatari citizens residing in the UAE, do not constitute discrimination under CERD — Measures of which Qatar complains do not entail, either by their purpose or by their effect, racial discrimination under CERD — Court does not have jurisdiction to entertain third claim, which relates to “indirect discrimination”.

*

First preliminary objection upheld — No need to consider second preliminary objection.

JUDGMENT

Present: President YUSUF; Vice-President XUE; Judges TOMKA, ABRAHAM, BENNOUNA, CAÑADO TRINDADE, DONOGHUE, GAJA, SEBUTINDE, BHANDARI, ROBINSON, CRAWFORD, GEVORGIAN, SALAM, IWASAWA; Judges ad hoc COT, DAUDET; Registrar GAUTIER.

In the case concerning the application of the International Convention on the Elimination of All Forms of Racial Discrimination,

between

the State of Qatar,
represented by

Mr. Mohammed Abdulaziz Al-Khulaifi, Legal Adviser to H.E. the Deputy Prime Minister and Minister for Foreign Affairs of the State of Qatar,
Dean of the College of Law, Qatar University,
as Agent;

Mr. Vaughan Lowe, QC, Emeritus Chichele Professor of Public International Law, University of Oxford, member of the Institut de droit international, Essex Court Chambers, member of the Bar of England and Wales,

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

Ms Catherine Amirfar, Debevoise & Plimpton LLP, member of the Bar of the State of New York,

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

Mr. Nico Schrijver, Professor of International Law, Leiden University, member of the Institut de droit international,

as Counsel and Advocates;

H.E. Mr. Abdullah bin Hussein Al-Jaber, Ambassador of the State of Qatar to the Kingdom of the Netherlands,

Mr. Ahmad Al-Mana, Ministry of Foreign Affairs of the State of Qatar,

Mr. Jassim Al-Kuwari, Ministry of Foreign Affairs of the State of Qatar,

Mr. Nasser Al-Hamad, Ministry of Foreign Affairs of the State of Qatar,

Ms Hanadi Al-Shafei, Ministry of Foreign Affairs of the State of Qatar,

Ms Hessa Al-Dosari, Ministry of Foreign Affairs of the State of Qatar,

Ms Sara Al-Saadi, Ministry of Foreign Affairs of the State of Qatar,

Ms Amna Al-Nasser, Ministry of Foreign Affairs of the State of Qatar,

Mr. Ali Al-Hababi, Embassy of the State of Qatar in the Netherlands,

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

Mr. Abdulla Al-Mulla, Ministry of Foreign Affairs of the State of Qatar,

as Advisers;

Mr. Pemmaraju Sreenivasa Rao, Special Adviser in the Office of the Attorney General of the State of Qatar, former member of the International Law Commission, member of the Institut de droit international,

Mr. Surya Subedi, QC (Hon.), Professor of International Law, University of Leeds, member of the Institut de droit international, Three Stone Chambers, member of the Bar of England and Wales,

Ms Loretta Malintoppi, 39 Essex Chambers, Singapore, member of the Bar of Rome,

Mr. Pierre d'Argent, Professor of International Law, Université catholique de Louvain, member of the Institut de droit international, Foley Hoag LLP, member of the Bar of Brussels,

Mr. Constantinos Salonidis, Foley Hoag LLP, member of the Bars of the State of New York and Greece,

Ms Floriane Lavaud, Debevoise & Plimpton LLP, member of the Bars of the State of New York and Paris, Solicitor of the Senior Courts of England and Wales,

Mr. Ioannis Konstantinidis, Assistant Professor of International Law, College of Law, Qatar University,

Mr. Ali Abusedra, Legal Counsel, Ministry of Foreign Affairs of the State of Qatar,

Ms Merryl Lawry-White, Debevoise & Plimpton LLP, member of the Bar of the State of New York, Solicitor Advocate of the Senior Courts of England and Wales,

Ms Ashika Singh, Debevoise & Plimpton LLP, member of the Bar of the State of New York,
 Ms Julianne Marley, Debevoise & Plimpton LLP, member of the Bar of the State of New York,
 Ms Rhianna Hoover, Debevoise & Plimpton LLP, member of the Bar of the State of New York,
 Mr. Joseph Klingler, Foley Hoag LLP, member of the Bars of the State of New York and the District of Columbia,
 Mr. Peter Tzeng, Foley Hoag LLP, member of the Bars of the State of New York and the District of Columbia,

as Counsel;

Ms Mary-Grace McEvoy, Debevoise & Plimpton LLP,
 Mr. Andrew Wharton, Debevoise & Plimpton LLP,
 Mr. Jacob Waltner, Debevoise & Plimpton LLP,
 as Assistants,

and

the United Arab Emirates,
 represented by

H.E. Ms Hissa Abdullah Ahmed Al-Otaiba, Ambassador of the United Arab Emirates to the Kingdom of the Netherlands,

as Agent;

H.E. Mr. Abdalla Hamdan AlNaqbi, Director of International Law Department, Ministry of Foreign Affairs and International Co-operation of the United Arab Emirates,

H.E. Ms Lubna Qassim Al Bastaki, Deputy Permanent Representative of the Permanent Mission of the United Arab Emirates to the United Nations Office and other international organizations in Geneva,

Mr. Scott Sheeran, Senior Legal Adviser to the Minister of State for Foreign Affairs, Ministry of Foreign Affairs and International Co-operation of the United Arab Emirates, Barrister and Solicitor of the High Court of New Zealand,

as Representatives and Advocates;

Sir Daniel Bethlehem, QC, Barrister, Twenty Essex Chambers, member of the Bar of England and Wales,

Mr. Mathias Forteau, Professor, University Paris Nanterre,
 as Counsel and Advocates;

Mr. Abdulla Al Jasmi, Head of the Multilateral Treaties and Agreements Section, International Law Department, Ministry of Foreign Affairs and International Co-operation of the United Arab Emirates,

Mr. Mohamed Salim Ali Alowais, Head of the International Organizations and Courts Section, Embassy of the United Arab Emirates in the Netherlands,

Ms Majd Abdelqadir Mohamed Abdalla, Senior Legal Researcher, Multilateral Treaties and Agreements Section, International Law Department, Ministry of Foreign Affairs and International Co-operation of the United Arab Emirates,

Mr. Rashed Jamal Ibrahim Ibrahim Azzam, Legal Researcher for International Relations, International Law Department, Ministry of Foreign Affairs and International Co-operation of the United Arab Emirates,

as Representatives;

Ms Caroline Balme, Legal Adviser to the Minister of State for Foreign Affairs, Ministry of Foreign Affairs and International Co-operation of the United Arab Emirates,

Mr. Paolo Busco, Legal Adviser to the Minister of State for Foreign Affairs, Ministry of Foreign Affairs and International Co-operation of the United Arab Emirates, member of the Italian Bar, registered European lawyer with the Bar of England and Wales,

Mr. Charles L. O. Buderer, Partner, Curtis, Mallet-Prevost, Colt & Mosle LLP, London, member of the Bars of the District of Columbia and the State of California,

Mr. Simon Olleson, Barrister, Twenty Essex Chambers, member of the Bar of England and Wales,

Ms Luciana T. Ricart, LL.M., New York University School of Law, Partner, Curtis, Mallet-Prevost, Colt & Mosle LLP, London, member of the Buenos Aires Bar Association and Solicitor of the Senior Courts of England and Wales,

Mr. Hal Shapiro, Partner, Akin Gump Strauss Hauer & Feld LLP, Washington, DC,

as Counsel;

Ms Patricia Jimenez Kwast, international law and dispute settlement consultant, DPhil candidate, University of Oxford,

as Assistant Counsel,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 11 June 2018, the State of Qatar (hereinafter referred to as “Qatar”) filed in the Registry of the Court an Application instituting proceedings against the United Arab Emirates (hereinafter referred to as the “UAE”) with regard to alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (hereinafter “CERD” or the “Convention”).

2. In its Application, Qatar seeks to found the Court’s jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article 22 of CERD.

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

4. The Registrar immediately communicated to the Government of the UAE the Application, in accordance with Article 40, paragraph 2, of the Statute of the Court, and the Request for the indication of provisional measures, in accor-

dance with Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of the filing of the Application and the Request for the indication of provisional measures by Qatar.

5. In addition, by a letter dated 13 June 2018, the Registrar informed all Member States of the United Nations of the filing of the above-mentioned Application and Request for the indication of provisional measures.

6. Pursuant to Article 40, paragraph 3, of the Statute of the Court, the Registrar notified the Member States of the United Nations, through the Secretary-General, of the filing of the Application, by transmission of the printed bilingual text thereof.

7. Since the Court included upon the Bench no judge of the nationality of either Party, each Party proceeded to exercise the right conferred upon it by Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case. Qatar chose Mr. Yves Daudet and the UAE Mr. Jean-Pierre Cot.

8. By its Order of 23 July 2018, the Court, having heard the Parties, indicated the following provisional measures:

- “(1) The United Arab Emirates must ensure that
- (i) families that include a Qatari, separated by the measures adopted by the United Arab Emirates on 5 June 2017, are reunited;
 - (ii) Qatari students affected by the measures adopted by the United Arab Emirates on 5 June 2017 are given the opportunity to complete their education in the United Arab Emirates or to obtain their educational records if they wish to continue their studies elsewhere; and
 - (iii) Qataris affected by the measures adopted by the United Arab Emirates on 5 June 2017 are allowed access to tribunals and other judicial organs of the United Arab Emirates;
- (2) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.”
(*I.C.J. Reports 2018 (II)*, pp. 433-434, para. 79.)

9. Pursuant to Article 43, paragraph 1, of the Rules of Court, the Registrar addressed to States parties to CERD the notifications provided for in Article 63, paragraph 1, of the Statute. In addition, in accordance with Article 69, paragraph 3, of the Rules of Court, the Registrar addressed to the United Nations, through its Secretary-General, the notifications provided for in Article 34, paragraph 3, of the Statute.

10. By an Order dated 25 July 2018, the President of the Court fixed 25 April 2019 and 27 January 2020 as the respective time-limits for the filing in the case of a Memorial by Qatar and a Counter-Memorial by the UAE.

11. On 22 March 2019, the UAE, referring to Article 41 of the Statute and Articles 73, 74 and 75 of the Rules of Court, also submitted a Request for the indication of provisional measures, in order to “preserve the UAE’s procedural rights” and “prevent Qatar from further aggravating or extending the dispute between the Parties pending a final decision in th[e] case”.

12. The Deputy-Registrar immediately communicated a copy of the said Request to the Government of Qatar. He also notified the Secretary-General of the United Nations of the filing of the UAE’s Request for the indication of provisional measures.

13. Qatar filed its Memorial in the case on 25 April 2019, within the time-limit fixed by the President of the Court.

14. On 30 April 2019, within the time-limit prescribed by Article 79, paragraph 1, of the Rules of Court of 14 April 1978 as amended on 1 February 2001, the UAE presented preliminary objections to the jurisdiction of the Court and the admissibility of the Application. Consequently, by an Order of 2 May 2019, having noted that, by virtue of Article 79, paragraph 5, of the Rules of Court of 14 April 1978 as amended on 1 February 2001, the proceedings on the merits were suspended, the President of the Court fixed 30 August 2019 as the time-limit within which Qatar could present a written statement of its observations and submissions on the preliminary objections raised by the UAE.

15. By its Order of 14 June 2019, the Court, having heard the Parties, rejected the Request for the indication of provisional measures submitted by the UAE on 22 March 2019.

16. Qatar filed a written statement of its observations and submissions on the preliminary objections raised by the UAE on 30 August 2019, within the time-limit fixed by the President of the Court.

17. By a letter dated 3 September 2019, the Registrar, acting pursuant to Article 69, paragraph 3, of the Rules of Court, transmitted to the Secretary-General of the United Nations copies of the written proceedings filed thus far in the case, and asked whether the Organization intended to present observations in writing under that provision in relation to the preliminary objections raised by the UAE. By a letter dated 27 September 2019, the Under-Secretary-General for Legal Affairs of the United Nations stated that the Organization did not intend to submit any observations in writing within the meaning of Article 69, paragraph 3, of the Rules of Court.

18. By a letter dated 19 August 2020, the Agent of the UAE, referring to Article 56 of the Rules of Court and Practice Directions IX and IXbis, expressed the wish of her Government to produce three new documents. By a letter dated 24 August 2020, the Agent of Qatar informed the Court that his Government consented to the production of the three new documents by the UAE and expressed the wish of his Government also to produce four new documents under Article 56, paragraph 1, of the Rules of Court. By a letter dated 26 August 2020, the Agent of the UAE informed the Court that her Government had no objection to the production of the four new documents by Qatar. Accordingly, the documents submitted by both Parties were added to the case file.

19. Pursuant to Article 53, paragraph 2, of its Rules, the Court, after ascertaining the views of the Parties, decided that copies of the pleadings and the documents annexed would be made accessible to the public on the opening of the oral proceedings, with the exception of Annexes 163, 165-243, 247-263, 265-271 and Exhibit B of Annex 272 of Qatar's Memorial, and Exhibit A of Annex 272-A of Qatar's Written Statement on the Preliminary Objections of the UAE.

20. Public hearings on the preliminary objections raised by the UAE were held by video link from 31 August 2020 to 7 September 2020, at which the Court heard the oral arguments and replies of:

For the UAE: H.E. Ms Hissa Abdullah Ahmed Al-Otaiba,
H.E. Mr. Abdalla Hamdan AlNaqbi,
Ms Lubna Qassim Al Bastaki,
Sir Daniel Bethlehem,

Mr. Scott Sheeran,
Mr. Mathias Forteau.

For *Qatar*: Mr. Mohammed Abdulaziz Al-Khulaifi,
Mr. Pierre Klein,
Ms Catherine Amirfar,
Mr. Lawrence H. Martin,
Mr. Nico Schrijver,
Mr. Vaughan Lowe.

*

21. In the Application, the following claims were made by Qatar:

“65. Qatar, in its own right and as *parens patriae* of its citizens, respectfully requests the Court to adjudge and declare that the UAE, through its State organs, State agents, and other persons and entities exercising governmental authority, and through other agents acting on its instructions or under its direction and control, has violated its obligations under Articles 2, 4, 5, 6, and 7 of the CERD by taking, *inter alia*, the following unlawful actions:

- (a) Expelling, on a collective basis, all Qataris from, and prohibiting the entry of all Qataris into, the UAE on the basis of their national origin;
- (b) Violating other fundamental rights, including the rights to marriage and choice of spouse, freedom of opinion and expression, public health and medical care, education and training, property, work, participation in cultural activities, and equal treatment before tribunals;
- (c) Failing to condemn and instead encouraging racial hatred against Qatar and Qataris and failing to take measures that aim to combat prejudices, including by *inter alia*: criminalizing the expression of sympathy toward Qatar and Qataris; allowing, promoting, and financing an international anti-Qatar public and social-media campaign; silencing Qatari media; and calling for physical attacks on Qatari entities; and
- (d) Failing to provide effective protection and remedies to Qataris to seek redress against acts of racial discrimination through UAE courts and institutions.

66. Accordingly, Qatar respectfully requests the Court to order the UAE to take all steps necessary to comply with its obligations under CERD and, *inter alia*:

- (a) Immediately cease and revoke the discriminatory measures, including but not limited to the directives against ‘sympathizing’ with Qataris, and any other national laws that discriminate *de jure* or *de facto* against Qataris on the basis of their national origin;

- (b) Immediately cease all other measures that incite discrimination (including media campaigns and supporting others to propagate discriminatory messages) and criminalize such measures;
- (c) Comply with its obligations under the CERD to condemn publicly racial discrimination against Qataris, pursue a policy of eliminating racial discrimination, and adopt measures to combat such prejudice;
- (d) Refrain from taking any further measures that would discriminate against Qataris within its jurisdiction or control;
- (e) Restore rights of Qataris to, *inter alia*, marriage and choice of spouse, freedom of opinion and expression, public health and medical care, education and training, property, work, participation in cultural activities, and equal treatment before tribunals, and put in place measures to ensure those rights are respected;
- (f) Provide assurances and guarantees of non-repetition of the UAE's illegal conduct; and
- (g) Make full reparation, including compensation, for the harm suffered as a result of the UAE's actions in violation of the CERD."

22. In the written proceedings on the merits, the following submissions were presented on behalf of the Government of Qatar in its Memorial:

"On the basis of the facts and legal arguments presented in this Memorial, Qatar, in its own right and as *parens patriae* of its citizens, respectfully requests the Court:

1. To adjudge and declare that the UAE, by the acts and omissions of its organs, agents, persons, and entities exercising governmental authority, and through other agents acting on its instructions or under its direction and control, is responsible for violations of the CERD, namely Articles 2 (1), 4, 5, 6 and 7, including by:
 - (a) expelling, on a collective basis, all Qataris from the UAE;
 - (b) applying the Absolute Ban and Modified Travel Ban in violation of fundamental rights that must be guaranteed equally to all under the CERD, regardless of national origin, including the rights to family, freedom of opinion and expression, education and training, property, work, and equal treatment before tribunals;
 - (c) engaging in, sponsoring, supporting, and otherwise encouraging racial discrimination, including racially discriminatory incitement against Qataris, most importantly by criminalizing 'sympathy' with Qatar and orchestrating, funding, and actively promoting a campaign of hatred against Qatar and Qataris, and thereby failing to nullify laws and regulations that have the effect of creating or perpetuating racial discrimination, to take 'all appropriate' measures to combat the spread of prejudice and negative stereotypes, and to promote tolerance, understanding and friendship; and

(d) failing to provide access to effective protection and remedies to Qataris to seek redress against acts of racial discrimination under the CERD through UAE tribunals or institutions, including the right to seek reparation;

2. To adjudge and declare that the UAE has violated the Court's Order on Provisional Measures of 23 July 2018;
3. And further to adjudge and declare that the UAE is obligated to cease its ongoing violations, make full reparation for all material and moral damage caused by its internationally wrongful acts and omissions under the CERD, and offer assurances and guarantees of non-repetition.
4. Accordingly, the Court is respectfully requested to order that the UAE:

(a) immediately cease its ongoing internationally wrongful acts and omissions in contravention of Articles 2 (1), 4, 5, 6, and 7 of the Convention as requested in Chapter VII;

(b) provide full reparation for the harm caused by its actions, including (i) restitution by lifting the ongoing Modified Travel Ban as it applies to Qataris collectively based on their national origin; (ii) financial compensation for the material and moral damage suffered by Qatar and Qataris, in an amount to be quantified in a separate phase of these proceedings; and (iii) satisfaction in the forms of a declaration of wrongfulness and an apology to Qatar and the Qatari people, as requested in Chapter VII; and

(c) provide Qatar with assurances and guarantees of non-repetition in written form as requested in Chapter VII."

23. In the preliminary objections, the following submissions were presented on behalf of the Government of the UAE:

"239. On the basis of each of the three independent preliminary objections explained above, the United Arab Emirates respectfully requests the Court to adjudge and declare that the Court lacks jurisdiction over Qatar's Application of 11 June 2018 and that the Application is inadmissible.

240. The United Arab Emirates reserves the right to amend and supplement this submission in accordance with the provisions of the Statute and the Rules of Court. The United Arab Emirates also reserves the right to submit further objections to the jurisdiction of the Court and to the admissibility of Qatar's claims if the case were to proceed to any subsequent phase."

24. In the written statement of its observations and submissions on the preliminary objections, the following submissions were presented on behalf of the Government of Qatar:

"For the reasons described above, Qatar respectfully requests that the Court:

1. Reject the Preliminary Objections presented by the UAE;

- 2. Hold that it has jurisdiction to hear the claims presented by Qatar as set out in the Memorial, and that these claims are admissible; and
- 3. Proceed to hear those claims on the merits.”

25. At the oral proceedings on the preliminary objections, the following submissions were presented by the Parties:

On behalf of the Government of the UAE,
at the hearing of 4 September 2020:

“The United Arab Emirates respectfully requests the Court to adjudge and declare that the Court lacks jurisdiction to address the claims brought by the State of Qatar by its Application dated 11 June 2018.”

On behalf of the Government of Qatar,
at the hearing of 7 September 2020:

“In accordance with Article 60 of the Rules of Court, for the reasons explained in our Written Statement of 30 August 2019 and during these hearings, Qatar respectfully asks the Court to:

- (a) Reject the Preliminary Objections presented by the UAE;
- (b) Hold that it has jurisdiction to hear the claims presented by Qatar as set out in its Application and Memorial; and
- (c) Proceed to hear those claims on the merits;
- (d) Or, in the alternative, reject the Second Preliminary Objection presented by the UAE and hold, in accordance with the provisions of Article 79ter, paragraph 4, of the Rules of Court, that the First Preliminary Objection submitted by the UAE does not possess an exclusively preliminary character.”

* * *

I. INTRODUCTION

A. Factual Background

26. On 5 June 2017, the UAE issued a statement (hereinafter the “5 June 2017 statement”) which provided, in relevant part, that

“based on the insistence of the State of Qatar to continue to undermine the security and stability of the region and its failure to honour international commitments and agreements, it has been decided to take the following measures that are necessary for safeguarding the interests of the [Gulf Cooperation Council] States in general and those of the brotherly Qatari people in particular:

.....

2. Preventing Qatari nationals from entering the UAE or crossing its point of entry, giving Qatari residents and visitors in the UAE 14 days to leave the country for precautionary security reasons. The UAE nationals are likewise banned from traveling to or staying in Qatar or transiting through its territories.”

The Gulf Cooperation Council (hereinafter the “GCC”) is an intergovernmental political and economic union of which Qatar and the UAE were founding members in 1981, along with the Kingdom of Bahrain, the State of Kuwait, the Sultanate of Oman and the Kingdom of Saudi Arabia.

27. In addition, the 5 June 2017 statement announced the severance of diplomatic relations with Qatar, in support of actions taken by the Kingdom of Bahrain and the Kingdom of Saudi Arabia, giving Qatari diplomats 48 hours to leave the UAE. It also proclaimed the “[c]losure of UAE airspace and seaports for all Qataris in 24 hours and banning [of] all Qatari means of transportation, coming to or leaving the UAE, from crossing, entering or leaving the UAE territories”.

28. The 5 June 2017 statement explained:

“The UAE is taking these decisive measures as a result of the Qatari authorities’ failure to abide by the Riyadh Agreement on returning GCC diplomats to Doha and its Complementary Arrangement in 2014, and Qatar’s continued support, funding and hosting of terror groups, primarily Islamic Brotherhood, and its sustained endeavours to promote the ideologies of Daesh and Al Qaeda across its direct and indirect media in addition to Qatar’s violation of the statement issued at the US-Islamic Summit in Riyadh on May 21st, 2017 on countering terrorism in the region and considering Iran a state sponsor of terrorism. The UAE measures are taken as well based on Qatari authorities’ hosting of terrorist elements and meddling in the affairs of other countries as well as their support of terror groups — policies which are likely to push the region into a stage of unpredictable consequences.”

29. According to an announcement posted on the website of the Ministry of Foreign Affairs and International Co-operation of the UAE on 11 June 2017, the President of the UAE had “instructed the authorities concerned to take into consideration the humanitarian circumstances of Emirati-Qatari joint families”. The announcement further provided that “the Ministry of the Interior ha[d] set up a telephone line . . . to receive such cases and take appropriate measures to help them”. In a statement

dated 5 July 2018, the Ministry of Foreign Affairs and International Co-operation of the UAE specified that

“[s]ince its announcement on June 5, 2017 . . . the UAE has instituted a requirement for all Qatari citizens overseas to obtain prior permission for entry into the UAE. Permission may be granted for a limited-duration period, at the discretion of the UAE [G]overnment.”

The statement added that

“Qatari citizens already resident in the UAE need not apply for permission to continue residence in the UAE. However, all Qatari citizens resident in the UAE are encouraged to obtain prior permission for re-entry into UAE territory. All applications for entry clearance may be made through the telephone hotline announced on June 11, 2017.”

30. The UAE took certain additional measures relating to Qatari media and speech in support of Qatar. In this regard, on 6 June 2017, the Attorney General of the UAE issued a statement indicating that expressions of sympathy for the State of Qatar or objections to the measures taken by the UAE against the Qatari Government were considered crimes punishable by imprisonment and a fine. The UAE blocked several websites operated by Qatari companies, including those run by Al Jazeera Media Network. On 6 July 2017, the Abu Dhabi Department of Economic Development issued a circular prohibiting the broadcasting of certain television channels operated by Qatari companies.

31. On 8 March 2018, Qatar deposited a communication with the Committee on the Elimination of Racial Discrimination (hereinafter the “CERD Committee”) under Article 11 of the Convention, requesting that the UAE take all necessary steps to end the measures enacted and implemented since 5 June 2017. According to Article 11, paragraph 1, of CERD, “[i]f a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee”. The UAE, through its responses dated 29 November 2018, 14 January 2019 and 19 March 2019, requested “the Committee to dismiss Qatar’s Article 11 Communication for lack [of] jurisdiction and/or lack of admissibility”.

32. On 11 June 2018, Qatar filed an Application in the Registry of the Court instituting the present proceedings (see paragraph 1 above).

33. In its decision on jurisdiction with regard to Qatar’s inter-State communication, dated 27 August 2019, the CERD Committee con-

cluded that “it ha[d] jurisdiction to examine the exceptions of inadmissibility raised by the Respondent State” (Decision on the jurisdiction of the Committee over the inter-State communication submitted by Qatar against the UAE dated 27 August 2019, UN doc. CERD/C/99/3, para. 60). In its decision on the admissibility of the inter-State communication, also dated 27 August 2019, the CERD Committee concluded as follows:

“64. In respect of the inter-state communication submitted on 8 March 2018 by Qatar against the United Arab Emirates, the Committee rejects the exceptions raised by the Respondent State concerning the admissibility of the inter-state communication.

65. The Committee requests its Chairperson to appoint, in accordance with article 12 (1) of the Convention, the members of an *ad hoc* Conciliation Commission, which shall make its good offices available to the States concerned with a view to an amicable solution of the matter on the basis of the States parties’ compliance with the Convention.” (Decision on the admissibility of the inter-State communication submitted by Qatar against the UAE dated 27 August 2019, UN doc. CERD/C/99/4, paras. 64-65.)

34. By a Note Verbale dated 27 April 2020, addressed by the Permanent Mission of the UAE in Geneva to the Office of the High Commissioner for Human Rights, the Permanent Mission “note[d] with appreciation the [Office’s] Note Verbale of 9 April 2020 advising that the *ad hoc* Conciliation Commission has been appointed by the Chair of the Committee, and has been effective since 1 March 2020”.

*B. The Jurisdictional Basis Invoked
and the Preliminary Objections Raised*

35. Qatar asserts that the Court has jurisdiction over its Application pursuant to Article 22 of CERD, which provides:

“Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.”

36. Qatar and the UAE are parties to CERD. Qatar acceded to this Convention on 22 July 1976 without entering any reservation. The UAE did so on 20 June 1974 without entering any reservation relevant to the present proceedings.

37. Qatar contends that there is a dispute between the Parties with respect to the interpretation and application of CERD and that the Par-

ties have been unable to settle this dispute despite Qatar's attempts to negotiate with the UAE.

38. At the present stage of these proceedings, the UAE asks the Court to adjudge and declare that the Court lacks jurisdiction to address the claims brought by Qatar on the basis of two preliminary objections. In its first preliminary objection, the UAE maintains that the Court lacks jurisdiction *ratione materiae* over the dispute between the Parties because the alleged acts do not fall within the scope of CERD. In its second preliminary objection, the UAE asserts that Qatar failed to satisfy the procedural preconditions of Article 22 of CERD.

39. The Court notes that, in its written pleadings, the UAE had also included an objection to admissibility on the ground that Qatar's claims constitute an abuse of process. However, during the oral proceedings, counsel for the UAE stated that it was not pursuing an allegation of abuse of process at this stage of the proceedings.

40. Before addressing the preliminary objections of the UAE, the Court will determine the subject-matter of the dispute.

II. SUBJECT-MATTER OF THE DISPUTE

41. Pursuant to Article 40, paragraph 1, of the Statute and Article 38, paragraph 1, of the Rules of Court, an applicant is required to indicate the subject of a dispute in its application. The Rules of Court also require that an application "specify the precise nature of the claim, together with a succinct statement of the facts and grounds on which the claim is based" (Article 38, paragraph 2, of the Rules of Court). A Memorial "shall contain a statement of the relevant facts, a statement of law, and the submissions" (Article 49, paragraph 1, of the Rules of Court).

42. It is for the Court itself to determine on an objective basis the subject-matter of the dispute between the parties, by isolating the real issue in the case and identifying the object of the applicant's claims. In doing so, the Court examines the application, as well as the written and oral pleadings of the parties, while giving particular attention to the formulation of the dispute chosen by the applicant. It takes account of the facts that the applicant presents as the basis for its claims. The matter is one of substance, not of form (*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)*, *Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, p. 575, para. 24; *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, pp. 308-309, para. 48).

* *

43. According to the Applicant, its “Application concerns a legal dispute between Qatar and the UAE regarding the UAE’s deliberate and flagrant violations of the CERD”. It claims that “[t]he UAE has enacted and implemented a series of discriminatory measures directed at Qataris based expressly on their national origin — measures that remain in effect to this day”.

44. Qatar further characterizes the subject-matter of the dispute in the written statement of its observations and submissions on the preliminary objections as follows:

“As Qatar explained in its Application, Memorial, and during the provisional measures phase of the proceedings, Qatar’s claims are based on acts and omissions of the UAE that discriminate against Qataris on the basis of national origin and in violation of Articles 2, 4, 5, 6, and 7 of the CERD. These acts and omissions include, in particular, the collective expulsion of Qataris from the UAE pursuant to its 5 June Directive (the ‘Expulsion Order’); the absolute ban on entry to the UAE by Qataris (the ‘Absolute Travel Ban’), which was later modified by the imposition of a ‘hotline’ and website procedure that continue to restrict Qataris’ entry into the UAE on an arbitrary and discriminatory basis (the ‘Modified Travel Ban’); and the enactment of measures encouraging anti-Qatari hate propaganda and prejudice, and suppressing Qatari media and speech deemed to support Qatar (including, respectively, the ‘Anti-Qatari Incitement Campaign’, the ‘Anti-Sympathy Law’, and the ‘Block on Qatari Media’).”

45. Qatar states that the measures it describes as the “expulsion order” and the “travel bans”, by their express reference to Qatari nationals, discriminate against Qataris on the basis of their current nationality. It points out that the definition of “racial discrimination” contained in Article 1, paragraph 1, of CERD includes discrimination on the basis of national origin. Qatar maintains that “nationality” is encompassed within the phrase “national origin”.

46. Qatar also alleges that the UAE directly targeted Qatari media corporations by blocking access to their websites and broadcasts in all or part of the UAE’s territory. It maintains that these measures were imposed “on racially discriminatory grounds” and that CERD extends to racial discrimination against “institutions”, which it considers to include corporations.

47. Qatar also points out that CERD applies to measures that are not framed as distinctions on the basis of a protected ground but have in fact the purpose or effect of racial discrimination. It maintains that, regardless of whether the measures imposed by the UAE are explicitly based on Qatari nationality, they have the purpose or effect of nullifying or impairing the rights and freedoms of persons of Qatari national origin, in the sense of their Qatari heritage and culture. It contends that such measures give rise to “indirect discrimination”.

48. As one part of its claim of indirect discrimination, Qatar asserts that the measures which discriminate on the basis of current Qatari nationality violate the UAE’s obligations under CERD for another independent reason, “because they have an unjustifiable disparate impact on individuals of Qatari origin, in the sense of their heritage and culture”.

49. As further support for its claim of indirect discrimination, Qatar maintains that a number of measures imposed by the UAE encourage anti-Qatari propaganda and suppress speech deemed to be in support of Qatar. It refers to the ban on Qatari media corporations as well as a 6 June 2017 announcement of the Attorney General of the UAE which stated that persons “expressing sympathy, bias or affection for” the State of Qatar or “objecting to the . . . measures . . . taken [by the UAE] against the Qatari [G]overnment” are considered to have committed crimes punishable by imprisonment and a fine (see paragraph 30 above). Qatar contends that, although this statement refers to the “Qatari Government”, it is “clearly understood as a reference to Qatar *qua* State and Qatar *qua* Qataris”. Additionally, Qatar alleges that the UAE has attempted to incite discrimination against Qataris, referring to statements in social and traditional media by persons it identifies as officials of the UAE, which it considers to be attributable to the UAE.

50. Qatar points out that the UAE’s measures are not exclusively addressed to Qataris on the basis of their current nationality and asserts that it has from the beginning framed its case to include a claim of unjustifiable disparate impact. It alleges that the measures imposed by the UAE penalize persons of Qatari national origin based on their identification with Qatari national traditions and culture, their Qatari accent or their Qatari dress. It further alleges that these measures discriminate against persons who are not Qatari citizens on the basis of their cultural identification as “Qataris”.

*

51. The UAE asserts that the subject-matter of the dispute is alleged discrimination on the basis of current Qatari nationality, a term that, in its view, is distinct from “national origin”. It contends that claims arising from the measures that Qatar describes as the “expulsion order” and the “travel bans” are founded on differential treatment of persons based on their Qatari nationality.

52. The UAE maintains that Qatar seeks to blur the distinction between the terms “nationality” and “national origin” by using the two terms interchangeably and by referring obliquely to “Qataris” in its written and oral pleadings.

53. The UAE acknowledges that it has imposed restrictions on websites of some Qatari media corporations, stating that it did so on the basis of content restrictions, pursuant to UAE law. It considers that measures that address corporations do not fall within the definition of racial discrimination contained in CERD and thus that Qatar’s claims with respect to the measures to restrict transmissions of Qatari media corporations are outside the scope of CERD.

54. The UAE also maintains that the restrictions on Qatari media and the other facts that Qatar invokes in support of its allegations of incitement and suppression of free speech, even if established, are not indicative of a claim of racial discrimination, but rather must be assessed in the context of the UAE’s conviction that Qatar supports terrorism, extremism and intervention. It points out that Qatar itself frames its allegation of incitement by accusing the UAE of “media attacks on Qatar” and the dissemination of false reports “accusing Qatar of support for terrorism”. It notes that the 6 June 2017 statement of the Attorney General of the UAE relates to persons who express support for the State of Qatar, not to persons of Qatari national origin.

55. The UAE accepts that disguised discrimination against members of a protected group would fall within the scope of CERD. However, it contends that, in the present case, the subject-matter of the dispute is limited to alleged direct discrimination on the basis of current nationality and does not extend to “indirect discrimination” because this is not the case that Qatar has pleaded. According to the UAE, Qatar has introduced legal arguments relating to “indirect discrimination” because its claim of direct discrimination on the basis of national origin does not withstand scrutiny.

* *

56. As can be seen from Qatar's characterization of the subject-matter of the dispute (see paragraph 44 above), Qatar makes three claims of racial discrimination. The first is its claim arising out of the "travel bans" and "expulsion order", which make express reference to Qatari nationals. The second is its claim arising from the restrictions on Qatari media corporations. Qatar's third claim is that the measures taken by the UAE, including the measures on which Qatar bases its first and second claims, result in "indirect discrimination" on the basis of Qatari national origin. In order to determine the subject-matter of the dispute, the Court will consider these three claims in turn.

57. As noted above (see paragraph 45), Qatar states that the "expulsion order" and the "travel bans", by their express reference to Qatari nationals, discriminate against Qataris on the basis of their current nationality. The UAE acknowledges that these measures differentiate between Qataris and other persons on the basis of their current nationality, but does not agree that the measures violate its obligations under CERD. The Parties' characterization of the basis for the challenged measures is consistent with the text of the measures themselves, which refer, *inter alia*, to "Qatari residents and visitors", "Qatari nationals", "Qataris", "Qatari citizens" and "travellers holding Qatari passports".

58. As to Qatar's first claim, taking into account Qatar's characterization of these measures and the facts on which it relies in support of its claim that the measures that it describes as the "expulsion order" and the "travel bans" discriminate against Qataris on the basis of their current nationality, in violation of the UAE's obligations under CERD, as well as the characterization by the Respondent, the Court considers that the Parties hold opposing views over this claim.

59. With regard to Qatar's second claim, the Court has noted that the UAE does not deny that it imposed measures to restrict broadcasting and internet programming by certain Qatari media corporations. The Parties disagree, however, on whether those measures directly targeted these media corporations in a racially discriminatory manner, in violation of the UAE's obligations under CERD.

60. As to its third claim, as noted above, Qatar maintains that the subject-matter of the dispute encompasses Qatar's assertion that the "expulsion order" and the "travel bans" give rise to "indirect discrimination" against persons of Qatari national origin, independent of the claim of racial discrimination on the basis of current nationality. The UAE, however,

maintains that this claim of “indirect discrimination” is not part of the case presented in Qatar’s Application.

61. The Court observes that the subject-matter of a dispute is not limited by the precise wording that an applicant State uses in its application. The Rules of Court provide an applicant State with some latitude to develop the allegations in its application, so long as it does not “transform the dispute brought before the Court by the application into another dispute which is different in character” (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, *Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 318-319, paras. 98 and 99).

62. Qatar’s Application did not expressly set out Qatar’s contention that the “travel bans” and “expulsion order” give rise to “indirect discrimination” against Qataris on a basis other than nationality. Qatar explains that it developed this argument in its Memorial in response to arguments made by the UAE during the provisional measures phase of the case. In addition, Qatar’s Request for the indication of provisional measures, filed on the same day as the Application, requested the Court to order that the UAE cease “all conduct that could result, directly or indirectly, in any form of racial discrimination against Qatari individuals and entities”.

63. The Court considers that the Rules of Court do not preclude Qatar from refining the legal arguments presented in its Application or advancing new arguments in response to those made by the UAE, thereby making explicit the contention that the measures that Qatar describes as the “travel bans” and “expulsion order” give rise to “indirect discrimination” against persons of Qatari national origin, in violation of the UAE’s obligations under CERD.

64. The Court turns next to Qatar’s other allegations of “indirect discrimination” against persons of Qatari national origin. Qatar brings these allegations on the basis of the restrictions on Qatari media corporations and other measures that, in its view, attack freedom of expression, incite anti-Qatari sentiment, and criminalize speech deemed to be in favour of Qatar or critical of the UAE’s policies towards Qatar, as well as statements by the UAE or its officials that express or condone anti-Qatari hate speech and propaganda.

65. The Court notes that Qatar made specific references in its Application to the 6 June 2017 statement by the Attorney General of the UAE, the restrictions on Qatari media corporations, the UAE’s “media defamation” campaign against Qatar and alleged statements by UAE officials fostering anti-Qatari sentiment.

66. The Parties address these contentions in their written and oral pleadings. Although Qatar acknowledges that the statement by the Attorney General of the UAE refers to criminal penalties for supporting the Qatari Government, not Qataris, it asserts that the risk of criminal penalties has a chilling effect and potentially alienates Qataris from their Emirati friends and family. It introduces several witness statements to substantiate its claims. In support of its contention that the UAE has fostered anti-Qatari sentiment, Qatar attaches to its Memorial a number of social media posts from persons it describes as UAE officials in which the authors criticize Qatar. Qatar claims that these statements formed part of a wider media campaign directed against it. It asserts that this criticism of Qatar has resulted in hate messages directed towards persons of Qatari national origin. Qatar also claims that the restrictions on Qatari media corporations have interfered with the free expression of Qatari ideas and culture in a broader sense and have contributed to the climate of fear which persons of Qatari national origin are said to have experienced as a result of the other measures that the UAE has taken.

67. The UAE does not dispute that its Attorney General made the statement to which Qatar objects. It acknowledges that it has made “adverse comments directed towards the State of Qatar and its behaviour” and that “others within its territory may have made similar comments against the State of Qatar”. It does not accept, however, that such comments about another State can give rise to a claim of racial discrimination under CERD. The UAE also refutes Qatar’s allegations of certain instances in which individuals claim to have been arrested, mistreated or to have suffered other negative consequences in the UAE for expressing sympathy with Qatar and adds that in any case the persons concerned are not of Qatari nationality or alleged to be of Qatari national origin. The UAE also argues that, by invoking the restrictions on Qatari media corporations in support of its claim of “indirect discrimination”, Qatar has presented a new argument that does not form part of the case pleaded in its Application.

68. In its Application, Qatar alleges that the restrictions imposed on Qatari media corporations violate the freedom of expression of Qataris (see paragraphs 64-65 above). As the Court previously noted (see paragraph 63 above), the Rules of Court do not preclude Qatar from refining the legal arguments presented in its Application or advancing new arguments.

69. Taking into account the Application and the written and oral pleadings, as well as the facts asserted by Qatar, the Court considers that the Parties hold opposing views over Qatar's claim that the UAE has engaged in "indirect discrimination" against persons of Qatari national origin, in violation of its obligations under CERD.

70. In view of the preceding analysis, the Court concludes that the Parties disagree in respect of Qatar's three claims that the UAE has violated its obligations under CERD: first, the claim that the measures that Qatar describes as the "expulsion order" and the "travel bans", by their express references to Qatari nationals, discriminate against Qataris on the basis of their current nationality; secondly, the claim that the UAE imposed racially discriminatory measures on certain Qatari media corporations; and thirdly, the claim that the UAE has engaged in "indirect discrimination" against persons of Qatari national origin by taking these measures and other measures summarized in paragraph 64. The Parties' disagreements in respect of these claims form the subject-matter of the dispute.

III. FIRST PRELIMINARY OBJECTION: JURISDICTION *RATIONE MATERIAE*

71. The Court will now consider whether it has jurisdiction *ratione materiae* over the dispute under Article 22 of CERD.

72. In order to determine whether the dispute is one with respect to the interpretation or application of CERD, under its Article 22, the Court will examine whether each of the above claims falls within the scope of CERD (*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), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, p. 595, paras. 94-95). The Court will address Qatar's claims in the order mentioned above (see paragraph 70).

73. The Court observes that, as far as the first claim of Qatar is concerned, the Parties disagree on whether the term "national origin" in Article 1, paragraph 1, of the Convention encompasses current nationality. In respect of the second claim of Qatar, the Parties disagree on whether the scope of the Convention extends to Qatari media corporations. Finally, in respect of the third claim, the Parties disagree on whether the measures of which Qatar complains give rise to "indirect discrimination" against Qataris on the basis of their national origin. The Court will examine each of these questions with a view to ascertaining whether it has jurisdiction *ratione materiae* in the present case.

A. *The Question whether the Term “National Origin”
Encompasses Current Nationality*

74. Qatar is of the view that the term “national origin”, in the definition of racial discrimination in Article 1, paragraph 1, of the Convention, encompasses current nationality and that the measures of which Qatar complains thus fall within the scope of CERD. The UAE argues that the term “national origin” does not include current nationality and that the Convention does not prohibit differentiation based on the current nationality of Qatari citizens, as complained of by Qatar in this case. Thus, the Parties hold opposing views on the meaning and scope of the term “national origin” in Article 1, paragraph 1, of the Convention, which reads:

“In this Convention, the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

* *

75. In order to determine its jurisdiction *ratione materiae* in this case, the Court will interpret CERD and specifically the term “national origin” in Article 1, paragraph 1, thereof by applying the rules on treaty interpretation enshrined in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (hereinafter the “Vienna Convention”). Although that Convention is not in force between the Parties and is not, in any event, applicable to treaties concluded before it entered into force, such as CERD, it is well established that Articles 31 and 32 of the Vienna Convention reflect rules of customary international law (*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)*, Preliminary Objections, Judgment, I.C.J. Reports 2019 (II), p. 598, para. 106; *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, I.C.J. Reports 2018 (I), pp. 320-321, para. 91; *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), p. 116, para. 33).

76. The Court will interpret the term “national origin” by reference, first, to the elements set out in Article 31 of the Vienna Convention,

which states the general rule of treaty interpretation. Only then will the Court turn to the supplementary means of interpretation provided for in Article 32 in order to confirm the meaning resulting from that process, or to remove ambiguity or obscurity, or to avoid a manifestly absurd or unreasonable result (*Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, p. 321, para. 91; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, *Judgment, I.C.J. Reports 2007 (I)*, pp. 109-110, para. 160).

77. The Court will also examine the practice of the CERD Committee and of regional human rights courts. In their pleadings, the Parties expressed different opinions on that practice in relation to the interpretation of the term “national origin” in Article 1, paragraph 1, of the Convention. The Court recalls that, in its jurisprudence, it has taken into account the practice of committees established under human rights conventions, as well as the practice of regional human rights courts, in so far as this was relevant for the purposes of interpretation (*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 331, para. 13; pp. 334-335, para. 24; p. 337, para. 33, and pp. 339-340, para. 40; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, *Judgment, I.C.J. Reports 2012 (II)*, pp. 457-458, para. 101; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *Merits, Judgment, I.C.J. Reports 2010 (II)*, pp. 663-664, para. 66; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 179, para. 109, and pp. 192-193, para. 136).

1. The term “national origin” in accordance with its ordinary meaning, read in its context and in the light of the object and purpose of CERD

78. The Court recalls that Article 31, paragraph 1, of the Vienna Convention provides that “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”. The Court’s interpretation must take account of all these elements considered as a whole (*Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, *Preliminary Objections, Judgment, I.C.J. Reports 2017*, p. 29, para. 64).

* *

79. According to the UAE, the ordinary meaning of the term “national origin” does not encompass current nationality, because the latter concept refers to a legal relationship with a State in the sense of citizenship, whereas national origin denotes “an association with a nation of people, not a State”. In the Respondent’s view, the five authentic texts of “the

Convention confirm that the drafters drew a distinction between the term “national origin”, as used in Article 1, paragraph 1, and Article 5 of the Convention, and “nationality”, as used in Article 1, paragraph 3, of the Convention. In its view, the definition of racial discrimination in the Convention refers only to characteristics that are inherent and immutable, namely race, colour, descent, or national or ethnic origin. Nationality, on the other hand, is a legal bond that can change over time. Lastly, the Respondent considers that the Convention’s title and Preamble confirm that it does not prohibit differentiation on the basis of an individual’s current nationality, since it concerns racial discrimination. According to the Respondent, the Preamble reaffirms the overall aim of bringing racial discrimination to an end and makes no mention of discrimination based on current nationality. It thus argues that the term “national origin” as used in Article 1, paragraph 1, of CERD is “an individual’s permanent association with a particular nation of people” and does not include nationality in the sense of citizenship.

80. In Qatar’s view, discrimination based on a person’s current nationality falls within the prohibition of racial discrimination provided for in Article 1, paragraph 1, of the Convention. According to the Applicant, the term “national origin” refers to a person belonging to a nation by birth, or to the country from which he or she originates, as well as a person’s current nationality or national affiliation. It contends that this term, as reproduced in the different languages of the Convention, does not refer only to the immutable characteristics of a person. Qatar further contends that paragraphs 2 and 3 of Article 1, which exclude from the scope of the Convention any differentiation between citizens and non-citizens and at the same time prohibit discrimination against any particular nationality, would be deprived of any *effet utile* if current nationality were not covered by the term “national origin”. Relying on the Preamble, the Applicant argues that it was the drafters’ intention that the Convention would not remain static but would form a comprehensive network of protections which would apply to racial discrimination, however it manifests, across different countries, contexts and time periods. According to the Applicant, excluding current nationality from the definition of racial discrimination would permit States to put in place any discriminatory policy targeting individuals or groups with the characteristics expressly mentioned in Article 1, paragraph 1, of the Convention. The adoption of such policies could be justified officially by sole reference to current nationality rather than to the characteristics in question. The Applicant thus concludes that the exclusion of nationality-based discrimination from the scope of the Convention would lead to absurd results wholly at odds with its purpose.

* *

81. As the Court has recalled on many occasions, “[i]nterpretation must be based above all upon the text of the treaty” (*Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, *Judgment*, *I.C.J. Reports 1994*, p. 22, para. 41). The Court observes that the definition of racial discrimination in the Convention includes “national or ethnic origin”. These references to “origin” denote, respectively, a person’s bond to a national or ethnic group at birth, whereas nationality is a legal attribute which is within the discretionary power of the State and can change during a person’s lifetime (*Nottebohm (Liechtenstein v. Guatemala)*, *Second Phase, Judgment*, *I.C.J. Reports 1955*, pp. 20 and 23). The Court notes that the other elements of the definition of racial discrimination, as set out in Article 1, paragraph 1, of the Convention, namely race, colour and descent, are also characteristics that are inherent at birth.

82. The Court will next turn to the context in which the term “national origin” is used in the Convention, in particular paragraphs 2 and 3 of Article 1, which provide that:

“2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.”

83. The Court considers that these provisions support the interpretation of the ordinary meaning of the term “national origin” as not encompassing current nationality. While according to paragraph 3, the Convention in no way affects legislation concerning nationality, citizenship or naturalization, on the condition that such legislation does not discriminate against any particular nationality, paragraph 2 provides that any “distinctions, exclusions, restrictions or preferences” between citizens and non-citizens do not fall within the scope of the Convention. In the Court’s view, such express exclusion from the scope of the Convention of differentiation between citizens and non-citizens indicates that the Convention does not prevent States parties from adopting measures that restrict the right of non-citizens to enter a State and their right to reside there — rights that are in dispute in this case — on the basis of their current nationality.

84. The Court will now examine the object and purpose of the Convention. The Court has frequently referred to the preamble of a convention to determine its object and purpose (*Certain Iranian Assets (Islamic*

Republic of Iran v. United States of America), *Preliminary Objections, Judgment*, *I.C.J. Reports 2019 (I)*, p. 28, para. 57, and p. 38, para. 91; *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, *Judgment*, *I.C.J. Reports 2014*, p. 251, para. 56; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, *Judgment*, *I.C.J. Reports 2012 (II)*, p. 449, para. 68).

85. It is recalled in the Preamble of CERD that

“the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end”.

86. The Court notes that CERD was drafted against the backdrop of the 1960s decolonization movement, for which the adoption of resolution 1514 (XV) of 14 December 1960 was a defining moment (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, *I.C.J. Reports 2019 (I)*, p. 132 para. 150). By underlining that “any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere”, the Preamble to the Convention clearly sets out its object and purpose, which is to bring to an end all practices that seek to establish a hierarchy among social groups as defined by their inherent characteristics or to impose a system of racial discrimination or segregation. The aim of the Convention is thus to eliminate all forms and manifestations of racial discrimination against human beings on the basis of real or perceived characteristics as of their origin, namely at birth.

87. CERD, whose universal character is confirmed by the fact that 182 States are parties to it, thus condemns any attempt to legitimize racial discrimination by invoking the superiority of one social group over another. Therefore, it was clearly not intended to cover every instance of differentiation between persons based on their nationality. Differentiation on the basis of nationality is common and is reflected in the legislation of most States parties.

88. Consequently, the term “national origin” in Article 1, paragraph 1, of CERD, in accordance with its ordinary meaning, read in its context and in the light of the object and purpose of the Convention, does not encompass current nationality.

2. *The term “national origin” in the light of the travaux préparatoires as a supplementary means of interpretation*

89. In light of the conclusion above, the Court need not resort to supplementary means of interpretation. However, the Court notes that both Parties have carried out a detailed analysis of the *travaux préparatoires* of the Convention in support of their respective positions on the meaning and scope of the term “national origin” in Article 1, paragraph 1, of the Convention. Considering this fact and the Court’s practice of confirming, when it deems it appropriate, its interpretation of the relevant texts by reference to the *travaux préparatoires* (see, for example, *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. 128, para. 142, and pp. 129-130, para. 147), the Court will examine the *travaux préparatoires* of CERD in the present case.

* *

90. According to the UAE, the various drafts of the definition of racial discrimination considered by the negotiators of the Convention did not refer to nationality in the political-legal sense of the term. The Respondent recalls that the amendment jointly proposed by the United States of America and France in the course of the work of the Third Committee of the United Nations General Assembly (hereinafter the “Third Committee”), according to which “the expression ‘national origin’ does not mean ‘nationality’ or ‘citizenship’”, was withdrawn in favour of an amendment adopted as the final text of Article 1. The Respondent adds that this withdrawal was justified by the insertion of paragraphs 2 and 3 into the text of Article 1, which the two countries considered “entirely acceptable”.

91. Qatar, for its part, asserts that the drafters of the Convention sought a broad and comprehensive definition of racial discrimination, which would leave no vulnerable group without protection, and they did not intend to exclude nationality-based discrimination from its scope. According to the Applicant, the fact that the proposed amendments seeking to exclude nationality from the scope of the term “national origin” in the definition of racial discrimination were not adopted confirms that this term encompasses current nationality. As regards the joint amendment of the United States of America and France, which was withdrawn in favour of the current wording of Article 1, Qatar considers that it was in any event limited in scope, since it sought to prevent non-citizens from availing themselves of certain rights reserved for citizens and in no way sought to exclude differentiation based on current nationality from the scope of the Convention. Thus, in Qatar’s view, the *travaux préparatoires* confirm that the scope of the Convention extends to discrimination based on cur-

rent nationality, in particular where, as in the present case, a State singles out an entire group of non-citizens for discriminatory treatment.

* *

92. The Court recalls that the Convention was drafted in three stages: first, as part of the work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (hereinafter the “Sub-Commission”), then within the Commission on Human Rights (hereinafter the “Commission”) and, finally, within the Third Committee.

93. In the view of the Court, the definition of racial discrimination contained in the various drafts demonstrates that the drafters did in fact have in mind the differences between national origin and nationality. The Sub-Commission discussed at length the question whether the definition should refer solely to national origin or should also include nationality. Although some members were in favour of including the term “nationality” in the first draft definition of racial discrimination, this was only for specific cases of States composed of different nationalities. Indeed, several members of the Sub-Commission were of the opinion that the Convention should not seek to eliminate all differentiation based on nationality in the political-legal sense of the term, since in all countries a distinction was made between nationals and aliens. As a result, the draft presented by the Sub-Commission to the Commission did not refer to current nationality as a basis of racial discrimination:

“In this Convention the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, national or ethnic origin (and in the case of States composed of different nationalities discrimination based on such difference) which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in political, economic, social, cultural or any other field of public life set forth *inter alia* in the Universal Declaration of Human Rights.” (“Draft International Convention on the Elimination of All Forms of Racial Discrimination”, annexed to the *Report of the Sixteenth Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights*, 13-31 January 1964, UN doc. E/CN.4/873, E/CN.4/Sub.2/241, 11 February 1964, p. 46.)

94. The Court notes that the question of the scope of the term “national origin” arose again during the work of the Commission. The Court

observes that it is clear from the Commission's discussions that the expression "national origin" refers not to nationality but to country of origin (United Nations, *Commission on Human Rights, Report on the Twentieth Session, 17 February-18 March 1964*, doc. E/3878, E/CN.4/874, pp. 24-25, para. 85). Accordingly, the draft Convention presented by the Commission to the Third Committee contained the following definition of racial discrimination, which sought to exclude nationality from the scope of the term "national origin":

"In this Convention the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, [national] or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public [life]. [In this paragraph the expression 'national origin' does not cover the status of any person as a citizen of a given State.]" (*Ibid.*, p. 111; see also United Nations, *Commission on Human Rights, Twentieth Session, Summary Record of the 810th Meeting*, 13 March 1964, doc. E/CN.4/SR.810, 15 May 1964, p. 5.)

95. It emerges from the discussions within the Third Committee that, although it was ultimately decided to retain the term "national origin" in the text of the Convention, this decision was made only in so far as the term refers to persons of foreign origin who are subject to racial discrimination in their country of residence on the grounds of that origin. Several delegations noted that national origin differs from current nationality.

96. In the Court's view, the fact that the amendment of the United States of America and France was not retained (see paragraph 90 above) cannot support the Applicant's position that the term "national origin" encompasses current nationality (see United Nations, *Official Records of the General Assembly, Twentieth Session, Third Committee*, "Draft International Convention on the Elimination of All Forms of Racial Discrimination", doc. A/6181, 18 December 1965, pp. 12-14, paras. 30-37). Although the amendment was withdrawn, this was done in order to arrive at a compromise formula that would enable the text of the Convention to be finalized, by adding paragraphs 2 and 3 to Article 1 (see the compromise amendment presented by Ghana, India, Kuwait, Lebanon, Mauritania, Morocco, Nigeria, Poland and Senegal, UN doc. A/C.3/L.1238). As the Court has noted (see paragraphs 82-83 above), paragraphs 2 and 3 of Article 1 provide that the Convention will not apply to differentiation between citizens and non-citizens and will not affect States' legislation on nationality, thus fully addressing the concerns expressed by certain delegations, including those of the United States of America and France, regarding the scope of the term "national origin" (see the explanations

provided by Lebanon in presenting the compromise amendment, United Nations, *Official Records of the General Assembly, Twentieth Session, Third Committee, Summary Record of the 1307th Meeting, held on 18 October 1965*, doc. A/C.3/SR.1307, p. 95, para. 1 (Lebanon)).

97. The Court concludes that the *travaux préparatoires* as a whole confirm that the term “national origin” in Article 1, paragraph 1, of the Convention does not include current nationality.

3. *The practice of the CERD Committee*

98. With regard to the practice of the CERD Committee, the UAE argues that the Committee’s opinions and general recommendations do not constitute subsequent practice or agreement of States parties to CERD regarding the interpretation of the Convention. In particular, the Respondent considers that General Recommendation XXX concerning discrimination against non-citizens, adopted by the CERD Committee in 2004, does not constitute an interpretation based on the practice of States parties and that, in any event, it is not intended as a general prohibition of all differential treatment based on nationality. The Respondent further considers that, according to that text, any differential treatment between different groups of non-citizens must be assessed “in the light of the objectives and purposes of the Convention”. Finally, as regards the decisions on jurisdiction and admissibility delivered by the CERD Committee in respect of the communication submitted by Qatar, the Respondent contends that these decisions are in no way binding on the Court and their reasoning with regard to the interpretation of the term “national origin” is insufficient. It adds that these decisions, whereby the Committee held that measures based on the current nationality of Qatari citizens fell within the scope of the Convention, are based on a single criterion, i.e. the Committee’s “constant practice”, which is inconsistent with the rules of treaty interpretation as reflected in Articles 31 and 32 of the Vienna Convention.

99. Qatar, for its part, requests that the Court ascribe great weight to the CERD Committee’s interpretations of the Convention, in keeping with its jurisprudence relating to committees established under other human rights conventions. The Applicant asserts that the CERD Committee, as the guardian of the Convention, has developed a constant practice whereby differentiation based on nationality is capable of constituting racial discrimination within the meaning of the Convention. It notes, in particular, that the CERD Committee found that it was competent to entertain Qatar’s communication concerning the same measures of which it complains in the present case, considering that they were capable of falling within the scope *ratione materiae* of the Convention. Thus, accord-

ing to Qatar, differentiation based on nationality can constitute racial discrimination within the meaning of the Convention, in so far as it does not pursue a legitimate aim and is not proportional to the achievement of that aim.

* *

100. The CERD Committee, in its General Recommendation XXX, considered that

“differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim”.

The Committee, a body of independent experts established specifically to supervise the application of CERD, relied on this General Recommendation when it found that it was competent to examine Qatar’s communication against the UAE and that this communication was admissible (Decision on the admissibility of the inter-State communication submitted by Qatar against the UAE dated 27 August 2019, UN doc. CERD/C/99/4, paras. 53-63).

101. The Court recalls that, in its Judgment on the merits in the *Diallo* case, to which reference is made in paragraph 77 above, it indicated that it should “ascribe great weight” to the interpretation of the International Covenant on Civil and Political Rights — which it was called upon to apply in that case — adopted by the Human Rights Committee (*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 664, para. 66). In this regard, it also affirmed, however, that it was “in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the Covenant on that of the Committee” (*ibid.*). In the present case concerning the interpretation of CERD, the Court has carefully considered the position taken by the CERD Committee, which is specified in paragraph 100 above, on the issue of discrimination based on nationality. By applying, as it is required to do (see paragraph 75 above), the relevant customary rules on treaty interpretation, it came to the conclusion indicated in paragraph 88 above, on the basis of the reasons set out above.

4. The jurisprudence of regional human rights courts

102. Lastly, both Parties referred in their written and oral pleadings to the jurisprudence of regional human rights courts in their arguments on the meaning and scope of the term “national origin”. In this respect, Qatar invokes the jurisprudence of the European Court of Human Rights, the Inter-American Court of Human Rights and the African Commission

on Human and Peoples' Rights, which, it contends, have interpreted the term national origin as including nationality. Moreover, the Applicant refers to this jurisprudence to reiterate that discrimination consists in a difference in treatment without legitimate justification and without a reasonable relationship of proportionality with the aim to be achieved, which in its view is true of the measures at issue in this case. The Applicant adds that the elements of the definition of discrimination adopted by the CERD Committee are exactly the same as those applied in regional human rights instruments and in general international law, and entail an examination of the legitimacy and proportionality of the measures.

103. The UAE disputes the relevance of the jurisprudence of regional human rights courts for the purpose of interpreting the Convention. In its view, the concept of discrimination that has prevailed in general international human rights law has no bearing on the interpretation of CERD, which is concerned solely with racial discrimination.

* *

104. It is for the Court, in the present case, to determine the scope of CERD, which exclusively concerns the prohibition of racial discrimination on the basis of race, colour, descent, or national or ethnic origin. The Court notes that the regional human rights instruments on which the jurisprudence of the regional courts is based concern respect for human rights without distinction of any kind among their beneficiaries. The relevant provisions of these conventions are modelled on Article 2 of the Universal Declaration of Human Rights of 10 December 1948, according to which

“[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (see also Article 14 of the European Convention on Human Rights, entitled “Prohibition of discrimination”; Article 1 of the American Convention on Human Rights; and Article 2 of the African Charter on Human and Peoples' Rights).

While these legal instruments all refer to “national origin”, their purpose is to ensure a wide scope of protection of human rights and fundamental freedoms. The jurisprudence of regional human rights courts based on those legal instruments is therefore of little help for the interpretation of the term “national origin” in CERD.

5. *Conclusion on the interpretation of the term “national origin”*

105. In light of the above, the Court finds that the term “national origin” in Article 1, paragraph 1, of the Convention does not encompass current nationality. Consequently, the measures complained of by Qatar in the present case as part of its first claim, which are based on the current nationality of its citizens, do not fall within the scope of CERD.

B. The Question whether the Measures Imposed by the UAE on certain Qatari Media Corporations Come within the Scope of the Convention

106. In its second claim, Qatar complains that the measures imposed on certain media corporations in the UAE have infringed the right to freedom of opinion and expression of Qataris. According to the Applicant, the UAE has blocked access to news websites and television stations operated by Qatari corporations, including Al Jazeera. In particular, Qatar submits that the effect of closing down Qatari media channels has been to silence sources of independent information that might have mitigated the racially discriminatory messages disseminated as part of anti-Qatari hate speech and propaganda. The Applicant submits that the block on Qatari media has not only directly targeted Qatari corporations, but has also infringed the freedom of expression of Qatari ideas and culture and contributed to the climate of fear experienced by Qataris as a result of their Qatari identity being targeted.

107. The UAE considers that the Applicant’s claims in respect of Qatari media corporations do not fall within the scope of the Convention. It submits that corporations are not covered by the Convention, which applies only to natural persons. The UAE further submits that while corporations may have a nationality, they do not have a national origin. In respect of the allegations made by Qatar, the UAE argues that it has a regulatory framework for media activities, which provides for certain content restrictions that allow the authorities to block the websites of media corporations. It is pursuant to this regulatory framework, which applies to all media corporations operating in the UAE, that the Respondent has blocked certain websites of Qatari media corporations.

* *

108. For the present purposes, the Court will examine only whether the measures concerning certain Qatari media corporations, which according to Qatar have been imposed in a racially discriminatory manner, fall

within the scope of the Convention. As to the alleged “indirect discrimination” resulting from the effect of the media block on persons of Qatari national origin, the Court will examine that aspect in its analysis of Qatar’s third claim. The Court notes that the Convention concerns only individuals or groups of individuals. This is clear from the various substantive provisions of CERD, which refer to “certain racial or ethnic groups or individuals” (Article 1, paragraph 4), “race or group of persons” (Article 4 (a)), or “individuals or groups of individuals” (Article 14, paragraph 1), as well as its Preamble which refers to racial “discrimination between human beings”. While under Article 2, paragraph 1 (a), of the Convention, “[e]ach State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions”, the Court considers that this reference to “institutions” does not include media corporations such as those in the present case. Read in its context and in the light of the object and purpose of the Convention, the term “institutions” refers to collective bodies or associations, which represent individuals or groups of individuals. Thus, the Court concludes that Qatar’s second claim relating to Qatari media corporations does not fall within the scope of the Convention.

C. The Question whether the Measures that Qatar Characterizes as “Indirect Discrimination” against Persons of Qatari National Origin Fall within the Scope of the Convention

109. Qatar submits that the “expulsion order” and “travel bans”, as well as other measures taken by the UAE, have had the purpose and effect of discriminating “indirectly” against persons of Qatari national origin in the historical-cultural sense, namely persons of Qatari birth and heritage, including their spouses, their children and persons otherwise linked to Qatar. According to Qatar, a measure may be considered as “based on” one of the grounds listed in Article 1 if, by its effect, it implicates a protected group. It adds that the Convention prohibits both direct discrimination, where a measure expressly distinguishes on the basis of one of the grounds of racial discrimination, and “indirect discrimination”, where a measure results in such a distinction by its effect. As part of the latter claim, Qatar complains of official statements critical of Qatar, including the 6 June 2017 statement of the Attorney General of the UAE, which mentioned criminal penalties for any expression of sympathy towards Qatar. Qatar adds that the UAE has failed to comply with CERD by encouraging and failing to suppress anti-Qatari hate speech and propaganda. The Applicant emphasizes that its complaints are based not on a minimal difference in the treatment of Qatari citizens in the area of immigration controls, but on comprehensive, serious and co-ordinated

discriminatory acts resulting in discrimination against persons of Qatari national origin in the historical-cultural sense, in particular on the basis of their traditions, culture, accent or dress.

110. According to the UAE, there is no question of “indirect” racial discrimination in the present case. It adds that this is not how Qatar presented its complaints in its Application instituting proceedings or in its offer to negotiate dated 25 April 2018, which concerned allegedly discriminatory policies directed at Qatari citizens and companies on the sole basis of their Qatari nationality in violation of CERD. It further states that the notion of “indirect discrimination”, in the context of the present Convention, is more specific than in other human rights treaties, since it refers solely to measures which are not discriminatory at face value but are discriminatory in fact and effect. The UAE observes that the 6 June 2017 statement by its Attorney General was made in the context of existing legislation, i.e. Federal Decree-Law No. 5 on Combating Cybercrimes dated 13 August 2012, and that there was no criminalizing of sympathy for Qatar. The UAE submits that the various allegations relating to its failure to suppress statements critical of Qatar or the actions of its Government, even if they were true, do not fall within the scope *ratione materiae* of the Convention since it does not constitute racial discrimination on the grounds of race, colour, descent, or national or ethnic origin.

* *

111. The Court recalls that it has already found that the “expulsion order” and “travel bans” of which Qatar complains as part of its first claim do not fall within the scope of CERD, since these measures are based on the current nationality of Qatari citizens, and that such differentiation is not covered by the term “national origin” in Article 1, paragraph 1, of the Convention (see paragraph 105 above). The Court will now turn to the question whether these and any other measures as alleged by Qatar are capable of falling within the scope of the Convention, if, by their purpose or effect, they result in racial discrimination against certain persons on the basis of their Qatari national origin.

112. The Court first observes that, according to the definition of racial discrimination in Article 1, paragraph 1, of CERD, a restriction may con-

stitute racial discrimination if it “has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”. Thus, the Convention prohibits all forms and manifestations of racial discrimination, whether arising from the purpose of a given restriction or from its effect. In the present case, while the measures based on current Qatari nationality may have collateral or secondary effects on persons born in Qatar or of Qatari parents, or on family members of Qatari citizens residing in the UAE, this does not constitute racial discrimination within the meaning of the Convention. In the Court’s view, the various measures of which Qatar complains do not, either by their purpose or by their effect, give rise to racial discrimination against Qataris as a distinct social group on the basis of their national origin. The Court further observes that declarations criticizing a State or its policies cannot be characterized as racial discrimination within the meaning of CERD. Thus, the Court concludes that, even if the measures of which Qatar complains in support of its “indirect discrimination” claim were to be proven on the facts, they are not capable of constituting racial discrimination within the meaning of the Convention.

113. It follows from the above that the Court does not have jurisdiction *ratione materiae* to entertain Qatar’s third claim, since the measures complained of therein by that State do not entail, either by their purpose or by their effect, racial discrimination within the meaning of Article 1, paragraph 1, of the Convention.

D. General Conclusion

114. In light of the above, the Court concludes that the first preliminary objection raised by the UAE must be upheld. Having found that it does not have jurisdiction *ratione materiae* in the present case under Article 22 of the Convention, the Court does not consider it necessary to examine the second preliminary objection raised by the UAE. In accordance with its jurisprudence, when its jurisdiction is challenged on diverse grounds, the Court is “free to base its decision on the ground which in its judgment is more direct and conclusive” (*Aerial Incident of 10 August 1999 (Pakistan v. India)*, *Jurisdiction of the Court, Judgment, I.C.J. Reports 2000*, p. 24, para. 26; *Aegean Sea Continental Shelf (Greece v. Turkey)*, *Judgment, I.C.J. Reports 1978*, p. 17, para. 40; *Certain Norwegian Loans (France v. Norway)*, *Judgment, I.C.J. Reports 1957*, p. 25).

* * *

115. For these reasons,

THE COURT,

(1) By eleven votes to six,

Upholds the first preliminary objection raised by the United Arab Emirates;

IN FAVOUR: *Vice-President Xue; Judges Tomka, Abraham, Bennouna, Donoghue, Gaja, Crawford, Gevorgian, Salam; Judges ad hoc Cot, Daudet;*

AGAINST: *President Yusuf; Judges Cançado Trindade, Sebutinde, Bhandari, Robinson, Iwasawa;*

(2) By eleven votes to six,

Finds that it has no jurisdiction to entertain the Application filed by the State of Qatar on 11 June 2018.

IN FAVOUR: *Vice-President Xue; Judges Tomka, Abraham, Bennouna, Donoghue, Gaja, Crawford, Gevorgian, Salam; Judges ad hoc Cot, Daudet;*

AGAINST: *President Yusuf; Judges Cançado Trindade, Sebutinde, Bhandari, Robinson, Iwasawa.*

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this fourth day of February, two thousand and twenty-one, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the State of Qatar and the Government of the United Arab Emirates, respectively.

(Signed) Abdulqawi Ahmed YUSUF,
President.

(Signed) Philippe GAUTIER,
Registrar.

President YUSUF appends a declaration to the Judgment of the Court; Judges SEBUTINDE, BHANDARI and ROBINSON append dissenting opinions to the Judgment of the Court; Judge IWASAWA appends a separate opinion to the Judgment of the Court; Judge *ad hoc* DAUDET appends a declaration to the Judgment of the Court.

(Initialed) A.A.Y.

(Initialed) Ph.G.