

2 MAY 2019

ORDER

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

(QATAR v. UNITED ARAB EMIRATES)

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

(QATAR c. ÉMIRATS ARABES UNIS)

2 MAI 2019

ORDONNANCE

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INTERNATIONAL COURT OF JUSTICE

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14 June 2019

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

(QATAR *v.* UNITED ARAB EMIRATES)

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

ORDER

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

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court,

Makes the following Order:

Whereas:

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. At the end of its Application, 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.”

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.”

3. 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.

4. 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.

5. By an Order dated 23 July 2018, the Court, after hearing 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.”

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

7. On 22 March 2019, the UAE, also referring to Article 41 of the Statute and Articles 73, 74 and 75 of the Rules of Court, in turn 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”.

8. At the end of its Request, the UAE asked the Court to order that:

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

9. 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.

10. Qatar filed its Memorial in the case on 25 April 2019, within the time-limit fixed by the Court (see paragraph 6 above). On 30 April 2019, within the time-limit prescribed by Article 79, paragraph 1, of the Rules of Court, the UAE presented preliminary objections to the jurisdiction of the Court and the admissibility of the Application. By an Order of 2 May 2019, 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.

11. Public hearings on the UAE's Request for the indication of provisional measures were held from 7 to 9 May 2019, during which oral observations were presented by:

On behalf of the UAE: H.E. Ms Hissa Abdullah Ahmed Al-Otaiba,
Mr. Robert G. Volterra,
Mr. W. Michael Reisman,
Mr. Dan Sarooshi,
Ms Maria Fogdestam-Agius.

On behalf of Qatar: Mr. Mohammed Abdulaziz Al-Khulaifi,
Mr. Vaughan Lowe,
Mr. Lawrence H. Martin,
Ms Catherine Amirfar,
Mr. Pierre Klein.

12. At the end of its second round of oral observations, the UAE asked the Court to order that:

- “(i) Qatar immediately withdraw its Communication submitted to the Committee on the Elimination of Racial Discrimination pursuant to Article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination on 8 March 2018 against the UAE and take all necessary measures to terminate consideration thereof by that Committee;
- (ii) Qatar immediately desist from hampering the UAE's attempts to assist Qatari citizens, including by un-blocking in its territory access to the website by which Qatari citizens can apply for a permit to return to the UAE;
- (iii) Qatar immediately stop its national bodies and its State-owned, controlled and funded media outlets from aggravating and extending the dispute and making it more difficult to resolve by disseminating false accusations regarding the UAE and the issues in dispute before the Court; and
- (iv) Qatar refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.”

13. At the end of its second round of oral observations, Qatar requested the Court “to reject the request for the indication of provisional measures submitted by the United Arab Emirates”.

14. By a letter dated 23 May 2019, the UAE submitted “two new pieces of evidence . . . relevant to [its] Request for the Indication of Provisional Measures”, stating that “[e]ach piece of evidence is part of a publication that is readily available”. For its part, by a letter dated 27 May 2019, Qatar objected to the submission of the two items. By letters dated 7 June 2019, the Registrar informed the Parties that the Court considered that the said items, produced after the closure of the oral proceedings, were not material for deciding on the UAE’s Request for the indication of provisional measures.

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I. PRIMA FACIE JURISDICTION

15. The Court may indicate provisional measures only if there is, prima facie, a basis on which its jurisdiction could be founded, but need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case. That is so whether the request for the indication of provisional measures is made by the applicant or by the respondent in the proceedings on the merits (see *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Provisional Measures, Order of 23 January 2007, I.C.J. Reports 2007 (I)*, p. 10, para. 24).

16. The Court recalls that, in its Order of 23 July 2018 indicating provisional measures in the present case, it concluded that, “prima facie, it has jurisdiction pursuant to Article 22 of CERD to deal with the case to the extent that the dispute between the Parties relates to the ‘interpretation or application’ of the said Convention” (*I.C.J. Reports 2018 (II)*, p. 421, para. 41). The Court sees no reason to revisit its previous finding in the context of the present Request.

II. THE PROVISIONAL MEASURES REQUESTED BY THE UAE

17. The power of the Court to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights of the parties in a case, pending its decision on the merits thereof. It follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong to either party. Therefore, the Court may exercise this power only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible (see, for example, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, pp. 421-422, para. 43).

18. At this stage of the proceedings, the Court is not called upon to determine definitively whether the rights which the UAE wishes to see protected exist; it need only decide whether the rights claimed by the UAE, and for which it is seeking protection, are plausible rights, taking account of the basis of the Court's prima facie jurisdiction in the present proceedings (see paragraph 16 above) (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, p. 422, para. 44). Thus, these alleged rights must have a sufficient link with the subject of the proceedings before the Court on the merits of the case (*Pulp Mills on the River Uruguay (Argentina v. Uruguay), Provisional Measures, Order of 23 January 2007, I.C.J. Reports 2007 (I)*, pp. 10-11, paras. 27-30).

* *

19. With respect to the first provisional measure requested, namely that the Court order that Qatar immediately withdraw its Communication submitted to the Committee on the Elimination of Racial Discrimination (hereinafter the "CERD Committee") and take all necessary measures to terminate consideration thereof by that Committee, the UAE argues that this request seeks to protect its rights "to procedural fairness, to an equal opportunity to present its case and to proper administration of justice". More specifically, the UAE maintains that it has a right not to be compelled to defend itself in parallel proceedings before the Court and the CERD Committee.

20. Concerning the second measure requested — that "Qatar immediately desist from hampering the UAE's attempts to assist Qatari citizens, including by un-blocking in its territory access to the website by which Qatari citizens can apply for a permit to return to the UAE" — the UAE asserts that Qatar's actions compromise the UAE's ability to implement the provisional measures indicated by the Court on 23 July 2018 without interference. It also contends that Qatar is manipulating and fabricating evidence by "creating the false impression that the UAE has imposed in effect a travel ban on Qatari citizens".

21. The third and fourth provisional measures requested by the UAE relate to the non-aggravation of the dispute. With regard to the third provisional measure, the UAE argues that Qatar's national bodies (in particular its National Human Rights Committee) and its State-owned, controlled and funded media outlets are disseminating false accusations regarding the UAE and the issues in dispute before the Court. It requests that Qatar be ordered to stop these actions, which it says have the effect of aggravating the dispute. As to the fourth measure — that "Qatar refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve" — the UAE, referring to its factual allegations underpinning the first three measures requested, submits that, if that measure is not granted, Qatar will continue to "adversely affect[] in a significant way the prospects of the resolution of the dispute".

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22. Qatar maintains that the Court should not grant any of the measures requested by the UAE. With regard to the first measure, Qatar asserts, *inter alia*, that the rights alleged by the UAE are not plausible under CERD and that the proceedings in the CERD Committee and the Court are neither duplicative nor abusive. Moreover, in its view, the measure requested by the UAE prejudices questions of jurisdiction and admissibility, which should be decided at the preliminary objections stage.

23. With respect to the second provisional measure requested, Qatar submits that it blocked the visa application website for legitimate security reasons and strongly denies any “manipulation and fabrication of evidence”, maintaining that the UAE’s assertions in this regard are pure speculation and concern issues to be determined at the merits stage. It adds that there are in any event other means that could be used by the UAE to comply with the provisional measures indicated in the 23 July 2018 Order, and that the question of whether it interfered with the UAE’s ability to comply with these measures is also one for the merits. In any case, Qatar states that it will unblock the website as soon as the security risks have been addressed by the UAE.

24. As to the third and fourth measures requested by the UAE, Qatar contends that the Court’s jurisprudence makes clear that “non-aggravation” of the dispute does not provide a stand-alone basis for provisional measures and that such measures cannot be granted in the absence of the indication of measures satisfying the Court’s settled criteria and aimed at preserving the rights in dispute. It also observes that, in its 23 July 2018 Order, the Court already indicated a non-aggravation measure that binds both Parties; the present requests concerning non-aggravation are thus, in its view, without object. Qatar adds that any claim that a party is violating an existing provisional measure is a matter for the merits phase.

* *

25. The Court considers that the first measure requested by the UAE does not concern a plausible right under CERD. This measure rather concerns the interpretation of the compromissory clause in Article 22 of CERD and the permissibility of proceedings before the CERD Committee when the Court is seised of the same matter. The Court has already examined this issue in its Order of 23 July 2018 on the Request for the indication of provisional measures submitted by Qatar. In that context, the Court noted that:

“Although the Parties disagree as to whether negotiations and recourse to the procedures referred to in Article 22 of CERD constitute alternative or cumulative preconditions to be fulfilled before the seisin of the Court, the Court is of the view that

it need not make a pronouncement on the issue at this stage of the proceedings . . . Nor does it consider it necessary, for the present purposes, to decide whether any *electa una via* principle or *lis pendens* exception are applicable in the present situation.” (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J Reports 2018 (II)*, pp. 420-421, para. 39.)

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

26. The Court considers that the second measure requested by the UAE relates to obstacles allegedly created by Qatar to the implementation by the UAE of the provisional measures indicated in the Order of 23 July 2018. It does not concern plausible rights of the UAE under CERD which require protection pending the final decision of the Court in the case. As the Court has already stated, “[t]he judgment on the merits is the appropriate place for the Court to assess compliance with the provisional measures” (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, *Judgment, I.C.J. Reports 2015 (II)*, p. 713, para. 126).

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

28. As to the third and fourth measures requested by the UAE, which relate to the non-aggravation of the dispute, the Court recalls that, when it is indicating provisional measures for the purpose of preserving specific rights, it may also indicate provisional measures with a view to preventing the aggravation or extension of a dispute whenever it considers that the circumstances so require. Such measures can only be indicated as an addition to specific measures to protect rights of the parties (see, for example, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Provisional Measures, Order of 23 January 2007, I.C.J Reports 2007 (I)*, p. 16, paras. 49-51). With regard to the present Request, the Court has not found that the conditions for the indication of specific provisional measures are met and thus it cannot indicate measures solely with respect to the non-aggravation of the dispute.

29. The Court further recalls that it has already indicated in its Order of 23 July 2018 that the Parties “shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve” (*I.C.J. Reports 2018 (II)*, p. 434, para. 79 (2)). This measure remains binding on the Parties.

III. CONCLUSION

30. The Court concludes from the foregoing that the conditions for the indication of provisional measures under Article 41 of its Statute are not met.

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31. The decision given in the present proceedings in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case, any questions relating to the admissibility of the Application, or any issues to be decided at the merits stage. It leaves unaffected the right of the Governments of Qatar and the UAE to submit arguments in respect of those questions.

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32. For these reasons,

THE COURT,

By fifteen votes to one,

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

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

AGAINST: *Judge ad hoc* Cot.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this fourteenth day of June, two thousand and nineteen, 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 COUVREUR,
Registrar.

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

(Initialed) A.A.Y.

(Initialed) Ph.C.
