

CR 2019/7

**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2019

Public sitting

held on Thursday 9 May 2019, at 10 a.m., at the Peace Palace,

President Yusuf presiding,

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

VERBATIM RECORD

ANNÉE 2019

Audience publique

tenue le jeudi 9 mai 2019, à 10 heures, au Palais de la Paix,

sous la présidence de M. Yusuf, président,

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

COMPTE RENDU

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

 Registrar Couvreur

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

The Government of the State of Qatar is represented by:

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

as Agent;

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

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

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

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

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

as Counsel and Advocates;

H.E. Sheikh Jassim bin Mohamed Al-Thani, Ambassador of the State of Qatar to the Kingdom of the Netherlands,

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

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

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

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

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

Ms Hissa Sultan Aldosari, Ministry of Foreign Affairs,

Ms Hanadi Al Shafei, Ministry of Foreign Affairs,

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

Mr. Ahmad Ali Al-Mohannadi, First Secretary,

as Advisers;

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

Le Gouvernement de l'Etat du Qatar est représenté par :

M. Mohammed Abdulaziz Al-Khulaifi, conseiller juridique de S. Exc. le vice-premier ministre et ministre des affaires étrangères, doyen de la faculté de droit de l'Université du Qatar,

comme agent ;

M. Vaughan Lowe, QC, membre du barreau d'Angleterre, Essex Court Chambers, professeur émérite de droit international à l'Université d'Oxford, membre de l'Institut de droit international,

Mme Catherine Amirfar, cabinet Debevoise & Plimpton LLP, membre du barreau de la Cour suprême des Etats-Unis et du barreau de New York,

M. Lawrence H. Martin, cabinet Foley Hoag LLP, membre du barreau du district de Columbia et du barreau de l'Etat du Massachusetts,

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

M. Donald Francis Donovan, cabinet Debevoise & Plimpton LLP, membre du barreau de la Cour suprême des Etats-Unis et du barreau de New York,

comme conseils et avocats ;

S. Exc. le cheikh Jassim bin Mohamed Al-Thani, ambassadeur de l'Etat du Qatar auprès du Royaume des Pays-Bas,

M. Ahmad Al-Mana, ministère des affaires étrangères,

M. Jassim Al-Kuwari, ministère des affaires étrangères,

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

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

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

Mme Hissa Sultan Aldosari, ministère des affaires étrangères,

Mme Hanadi Al Shafei, ministère des affaires étrangères,

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

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

M. Omar Boujnane, ambassade de l'Etat du Qatar aux Pays-Bas,

M. Ahmad Ali Al-Mohannadi, premier secrétaire,

comme conseillers ;

M. Pemmaraju Sreenivasa Rao, conseiller spécial, bureau de l'*Attorney General* de l'Etat du Qatar, ancien membre de la Commission de droit international, membre de l'Institut de droit international,

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

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

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

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

Ms Julianne Marley, Debevoise & Plimpton LLP, member of the Bar of New York,

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

Mr. Joseph Klingler, Foley Hoag LLP, member of the Bars of New York and the District of Columbia,

Mr. Peter Tzeng, Foley Hoag LLP, member of the Bar of New York,

as Counsel.

The Government of the United Arab Emirates is represented by:

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

as Agent;

Mr. Robert Volterra, Barrister and Solicitor at the Law Society of Upper Canada, Solicitor Advocate in England and Wales, Volterra Fietta law firm, Visiting Professor of Law, University College London, Visiting Senior Lecturer, King's College London,

Mr. W. Michael Reisman, Myres S. McDougal Professor of International Law at Yale Law School, member of the Institut de droit international, Honorary President of the American Society of International Law,

Mr. Dan Sarooshi, QC, member of the English Bar, Essex Court Chambers, Professor of Public International Law, University of Oxford, Senior Research Fellow, Queen's College, Oxford,

Ms Maria Fogdestam-Agius, *Advokat*, Swedish Bar Association, Volterra Fietta law firm,

as Counsel and Advocates;

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

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

M. Surya Subedi, QC (Hon.), membre du barreau d'Angleterre, Three Stone, professeur de droit international à l'Université de Leeds, membre de l'Institut de droit international,

M. Constantinos Salonidis, cabinet Foley Hoag LLP, membre du barreau de New York et du barreau de Grèce,

Mme Floriane Lavaud, cabinet Debevoise & Plimpton LLP, membre du barreau de New York et du barreau de Paris, *Solicitor* (Angleterre et pays de Galles),

Mme Merryl Lawry-White, cabinet Debevoise & Plimpton LLP, membre du barreau de New York, avocat et *Solicitor* (Angleterre et pays de Galles),

Mme Julianne Marley, cabinet Debevoise & Plimpton LLP, membre du barreau de New York,

M. Ioannis Konstantinidis, professeur adjoint de droit international à la faculté de droit de l'Université du Qatar,

M. Joseph Klingler, cabinet Foley Hoag LLP, membre du barreau de New York et du barreau du district de Columbia,

M. Peter Tzeng, cabinet Foley Hoag LLP, membre du barreau de New York,

comme conseils.

Le Gouvernement des Emirats arabes unis est représenté par :

S. Exc. Mme Hissa Abdullah Ahmed Al-Otaiba, ambassadeur des Emirats arabes unis auprès du Royaume des Pays-Bas,

comme agent ;

M. Robert Volterra, *Barrister* et *Solicitor* (Law Society of Upper Canada), avocat et *Solicitor* (Angleterre et pays de Galles), cabinet Volterra Fietta, professeur de droit invité à l'University College de Londres, maître de conférences invité au King's College de Londres,

M. W. Michael Reisman, professeur de droit international à l'université de Yale, titulaire de la chaire Myres S. McDougal, membre de l'Institut de droit international, président honoraire de l'American Society of International Law,

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

Mme Maria Fogdestam-Agius, avocate, association du barreau de Suède, cabinet Volterra Fietta,

comme conseils et avocats ;

S. Exc. M. Abdalla Hamdan Alnaqbi, directeur du département du droit international, ministère des affaires étrangères et de la coopération internationale,

M. Abdulla Al Jasmi, chef du service des traités et accords multilatéraux, ministère des affaires étrangères et de la coopération internationale,

Mr. Mohamed Alowais, Head of the International Organizations and Courts Section, Embassy of the United Arab Emirates in The Hague,

Mr. Hamad Al-Ali, Second Secretary, Ministry of Foreign Affairs and International Co-operation,

Ms Majd Abdelqadir Abdalla, Third Secretary, Ministry of Foreign Affairs and International Co-operation,

as Special Advisers;

Mr. Mark Somos, Senior Research Affiliate, Max Planck Institute for Comparative Public Law and International Law,

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

Mr. Álvaro Nistal, member of the Madrid Bar Association, Solicitor of the Senior Courts of England and Wales, Volterra Fietta law firm,

as Counsel;

Mr. Gunjan Sharma, member of the New York Bar, Volterra Fietta law firm,

Ms Angela Margaret Ha, admitted to practice in Australia, Volterra Fietta law firm,

Mr. Roberto Lupini Pinzani, member of the Bar of Miranda, Venezuela, Volterra Fietta law firm,

Mr. Alessandro Rollo, member of the Bar of Lecce, Italy, Registered European Lawyer with the Solicitors Regulation Authority in England and Wales, Volterra Fietta law firm,

Mr. Corentin Baslé, member of the Paris Bar, Volterra Fietta law firm,

Mr. Tisungane Makato, member of the Malawi Bar, Volterra Fietta law firm,

as Assistant Counsel.

M. Mohamed Alowais, chef du service des organisations et juridictions internationales, ambassade des Emirats arabes unis à La Haye,

M. Hamad Al-Ali, deuxième secrétaire, ministère des affaires étrangères et de la coopération internationale,

Mme Majd Abdelqadir Abdalla, troisième secrétaire, ministère des affaires étrangères et de la coopération internationale,

comme conseillers spéciaux ;

M. Mark Somos, chercheur principal adjoint, Institut Max Planck de droit public comparé et de droit international,

M. Charles L. O. Buder, membre de l'association du barreau du district de Columbia et du barreau de l'Etat de Californie, cabinet Curtis, Mallet-Prevost, Colt & Mosle LLP,

M. Álvaro Nistal, membre de l'association du barreau de Madrid, *Solicitor* auprès des tribunaux supérieurs d'Angleterre et du pays de Galles, cabinet Volterra Fietta,

comme conseils ;

M. Gunjan Sharma, membre du barreau de New York, cabinet Volterra Fietta,

Mme Angela Margaret Ha, avocate, Australie, cabinet Volterra Fietta,

M. Roberto Lupini Pinzani, membre du barreau de Miranda, Venezuela, cabinet Volterra Fietta,

M. Alessandro Rollo, membre du barreau de Lecce, Italie, statut de *Registered European Lawyer* de la Solicitors Regulation Authority (Angleterre et pays de Galles), cabinet Volterra Fietta,

M. Corentin Baslé, membre du barreau de Paris, cabinet Volterra Fietta,

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

comme conseils adjoints.

The PRESIDENT: The sitting is now open. The Court meets this morning to hear the second round of oral observations of the United Arab Emirates on its Request for indication of provisional measures. I now call on Professor Volterra. You have the floor.

Mr. VOLTERRA:

**I. THE LEGAL STANDARD FOR PROVISIONAL MEASURES
AND FOURTH PROVISIONAL MEASURE**

1. Mr. President, Honourable Members of the Court, it is an honour for me to begin the UAE's second round of observations before this august Court. Time does not permit us to address today all points at issue. Therefore, for the avoidance of doubt, the UAE expressly confirms all of its previous written and oral submissions on its Request.

2. Yesterday, the Court heard Qatar submit that a different standard should be applied to the UAE's Request than the Court applied to Qatar's own Request for indication of the provisional measures last July. Qatar is thus asking this Court to apply a different standard as to the facts. Qatar is also asking this Court to apply a different standard as to the law.

3. As to the facts, the Court will recall that Qatar was granted provisional measures in July 2018 even though Qatar did not, and could not, prove its allegations of the mass expulsion of Qatari citizens from UAE territory, or the inability of mixed families to live together, or the inability of Qatari students to continue their education, or the inability of Qatari citizens to assert their rights before the UAE courts. The Court acknowledged, in relation to Qatar's Request for provisional measures, that "[i]t c[ould not] at th[at] stage make definitive findings of fact"¹. Nevertheless, the Court issued provisional measures to Qatar on the grounds that it "appears that" some of Qatar's claims may be supported, and that "the Court . . . need only decide whether the rights claimed by Qatar . . . are plausible"².

4. In direct contrast, the UAE has proven beyond any doubt every factual basis for its Request. These facts are not disputed by Qatar, even though Qatar interprets their legal character or

¹ *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. 428, para. 62 (hereinafter "*23 July 2018 Order*").

² *Ibid.*, p. 422, para. 44 and p. 427, para. 54.

effect differently. Thus, you have heard that Qatar accepts that there are two parallel proceedings before the CERD Committee and this Court regarding the same dispute³. Qatar has been forced to admit in dramatic fashion a few days before this hearing, that it has indeed been blocking the UAE's visa application website⁴. And Qatar cannot deny the statements and activities of Qatar's NHRC and its State-controlled media outlets, which are a matter of public record.

5. Nor can Qatar deny that it has made astonishingly extensive redactions to the witness declarations it submitted in its Memorial. I refer you to slide 2, which compares the typical redactions of the witness declarations Qatar submitted on the left side of the slide with the very limited redactions used by the UAE in a technical manner on the right side.

6. Qatar also argued that the Court must not indicate provisional measures to address the UAE's rights because any question related to the protection of a right that might be related to jurisdiction, admissibility or merits can only be addressed by the Courts after a "full exchange of written submissions"⁵. That was from Qatar's submissions in the first round of oral observations. Qatar simply wants to delay the Court addressing the question of the provisional protection of the UAE's rights. Because, as long as the provisional protection of the UAE's rights is delayed, Qatar will be able to continue to prejudice them until, eventually, the possibility of relief for the UAE becomes moot, regardless of what the Court eventually decides.

7. Qatar also wants this Court to apply a different standard on the law than it did for its own Request for provisional measures last year. Yesterday, counsel for Qatar argued that this Court cannot indicate any of the requested provisional measures because "the rights for which the UAE seeks protection must form the subject-matter of the case on the merits"⁶, from Qatar's first round of observations. However, when its alleged rights were at issue, Qatar submitted to the Court that provisional measures served two purposes. It made a different submission to the Court. First — and I am using Qatar's words to you from July 2018 — they "preserve the rights in dispute". Second,

³ See e.g. CR 2019/5, p. 28, para. 3 (Reisman).

⁴ Letter from the President of the Communications Regulatory Authority of the State of Qatar to His Excellency Dr. Mohammed Abdulaziz Al-Khulaifi, Legal Advisor to His Excellency Deputy Prime Minister and Minister for Foreign Affairs, 30 Apr. 2019, Documents submitted by Qatar on 30 April 2019 in the context of the UAE's request for provisional measures, Annex 33.

⁵ CR 2019/6, p. 46, para. 26 (Amirfar).

⁶ CR 2019/6, p. 28, para. 7 (Martin).

according to Qatar, last year, they “protect the value of this honourable Court’s judicial functions more generally”⁷.

8. The correct standard, and all that is required, is that the rights claimed by the moving party must be “plausible” and have a “sufficient connection with the merits of the case”⁸. Nowhere in Article 41 or the Court’s jurisprudence does it say that the claimed plausible rights must be identical with the merits. Qatar is actually trying to convince the Court to require the UAE to frame its requests for provisional measures within the factual and legal arguments of Qatar. But this is not the relevant legal standard. A respondent seeking interim relief is not required to accept the factual and legal positions of the applicant. And a court in such circumstances is not pre-judging the issues if it accepts that the respondent’s rights are plausible. It was notable, yesterday, that Qatar chose not to address the Court’s holding, in the *Pulp Mills* case, that “the rights of the respondent are not dependent solely upon the way in which the applicant formulates its application”⁹. On Qatar’s current view of provisional measures, that is the one they are presenting to you now and not in July of last year, only applicants would ever receive provisional measures because, absent counter-claims, it is applicants that define the rights at issue in the dispute.

9. Just as notably, Qatar did not claim that there was no prima facie jurisdiction for the Court to consider the UAE’s Request. And Qatar did not claim that the UAE does not have plausible rights. I invite the Court to turn its attention to the next slide: slide 3. There, the Court will see extracts from yesterday’s transcript where Qatar admitted that the UAE’s important procedural rights were implicated by its Application.

10. Qatar also quoted Mr. Robert Kolb’s treatise, *The International Court of Justice*, for the proposition, and I quote from Qatar’s first round observations yesterday, “[o]ne cannot seek the protection of rights other than those that are the subject of the main dispute”¹⁰. Qatar omitted to inform the Court that Mr. Kolb then continued, just a few lines later, to assert that provisional measures “can be slightly further removed from the subject matter of the dispute than measures to

⁷ CR 2018/12, p. 51, para. 2 (Goldsmith).

⁸ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Provisional Measures*, *Order of 23 January 2007*, *I.C.J. Reports 2007 (I)*, p. 11, para. 30.

⁹ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Provisional Measures*, *Order of 23 January 2007*, *I.C.J. Reports 2007 (I)*, p. 10, para. 28.

¹⁰ CR 2019/6, p. 33, para. 23 (Martin).

protect disputed substantive rights”¹¹. And Mr. Kolb went on even further, “it is necessary to protect the court’s procedure itself, since damage to the procedure will unfailingly albeit indirectly affect the parties’ substantive rights too”¹².

11. The Court’s power under Article 41 (1) is to “indicate . . . any provisional measures which ought to be taken to preserve the respective rights of either party”. Furthermore, nothing in the separate opinion of President Aréchaga in the *Aegean Continental Shelf* case suggests that procedural rights of a party, which are necessarily “sub-judice”, are excluded from protection by provisional measures¹³.

12. The *reductio ad absurdum* of Qatar’s position untenably holds that the UAE has plausible procedural rights, that the rights may indeed need the protection, urgently, of the Court to prevent irreparable harm and harm to the Court’s functioning but that the Court has no power to protect those rights nonetheless. On Qatar’s view, the Court could not prevent, for example, the fabrication of fraudulent evidence. The Court not prevent the destruction of evidence. On Qatar’s view, the Court could not prevent the intimidation of witnesses or even the kidnapping of opposing counsel. On Qatar’s case, the Court must simply tolerate such injustices. This is despite the fact that as Qatar itself submitted yesterday, “[t]he Court is the master of its own procedure”¹⁴.

13. Qatar also now submits that the Court cannot grant provisional measures because doing so would pre-judge issues of jurisdiction and admissibility¹⁵. Last July, the Court issued provisional measures without pre-judging jurisdiction and admissibility, stating that the Court’s Order “need not make a pronouncement on the issue at this stage of the proceedings”¹⁶. The Court accepted Qatar’s interpretation of Article 22 of the CERD Convention on a prima facie basis in relation to Qatar’s provisional measures request. There is no reason why this Court should now not also accept the UAE’s interpretation of Article 22 — which is of course far more cogent than that of Qatar — on a prima facie basis, when it is considering the provisional measures application of the UAE.

¹¹ R. Kolb, *The International Court of Justice*, 2013, p. 625.

¹² R. Kolb, *The International Court of Justice*, 2013, p. 625.

¹³ *Aegean Sea Continental Shelf (Greece v. Turkey)*, *Interim Protection, Order of 11 September 1976*, *I.C.J. Reports 1976*, separate opinion of President Jiménez de Aréchaga, pp. 15-16.

¹⁴ CR 2019/6, p. 37, para. 42 (Martin).

¹⁵ CR 2019/6, p. 32, para. 21 and p. 34, para. 29 (Martin).

¹⁶ *Order of 23 July 2018*, para. 39.

14. Finally, Qatar argues that no urgency or irreparable harm arises from its misconduct. The submissions of the UAE yesterday have demonstrated that there is a clear risk of irreparable harm to the UAE's rights, rights that including as confirmed by Qatar's conduct over the past few months, require the Court's protection. Qatar proclaimed that it had "[c]onfidence in the Court's ability to determine the dispute on the basis of the evidence actually before it"¹⁷. To be clear, the UAE has confidence that the Court will diligently act to preserve the Parties' equality of arms. After all, it is the UAE's trust in the fact that the Court will do for the UAE that which it did for Qatar that has brought the UAE to make this present Request. But the UAE quite rightly has no confidence — none whatsoever — that Qatar will not cause inconsistent outcomes with its parallel proceedings. The UAE has no confidence that Qatar will not continue to make false statements. The UAE has no confidence that Qatar will not continue to tamper with the UAE's efforts to comply with the Court's July Order. And the UAE has no confidence that Qatar will not continue to fabricate evidence through the efforts of, among others, its Amiri Diwan and the NHRC.

15. In fact, yesterday, notably, you heard nothing from Qatar about its fabrication of evidence, whether in the past or present, except to characterize its submission of 82 forged documents to this Court in *Qatar v. Bahrain* as something that happened some time ago, as if that somehow made it less significant. Qatar apparently has nothing substantive to say in its own defence about these important matters. The only other explanation for Qatar's silence yesterday — and this explanation, of course, would be far more troubling indeed — is that Qatar wishes to say things about these important matters but does not want to give the UAE an opportunity to respond and thus has held back its submissions tactically and deliberately on this, until its second round of observations.

16. The UAE's need for urgent relief to prevent irreparable harm is in fact easily understood here. The erosion of procedural rights, such as caused to the UAE by Qatar's conduct in this case, irreparably harms the integrity of any proceedings. As my colleagues have explained, parallel proceedings before the CERD Committee and this Court may irreparably lead to inconsistent outcomes. As Dr. Fogdestam-Agius and I established yesterday, Qatar's ongoing fabrication of

¹⁷ CR 2019/6, p. 53, para. 43 (Amirfar). See also CR 2019/6, pp. 37-38 (Martin).

fraudulent evidence will prejudice the UAE, heighten the perceived impact of the UAE's lawful measures and frustrate this Court's fact-finding function. The same outcome results in relation to Qatar's admitted secret blocking of the means by which Qatari citizens can return to the UAE.

17. In the contemporary interactive global community, allegations of racial discrimination that are packaged as "facts" and spread through electronic and social media are intended to have deeply adverse, manifold and ramifying injurious consequences to their target. They spread virally and they can excite popular revulsion that is manifested, politically and economically, across borders. The injuries to the target — such as the UAE is a target of Qatar — are continuing and real. This is so even though by the nature of this weapon, for, make no mistake, this is a weapon. It may be difficult to quantify at any moment and difficult to reverse. The only effective remedy is injunctive: to stop them before they are created and disseminated.

18. Qatar also submitted that the non-aggravation of the dispute does not justify provisional measures on its own. But its own authority, Mr. Kolb, whom I quoted a few minutes ago, confirms the power to grant such provisional measures because otherwise the "parties [would be] freely permitted to aggravate the dispute and drain the sense out of the rights that were being litigated"¹⁸. The Court has confirmed itself that it can issue such provisional measures independently of the parties' request¹⁹. And I refer the Court to the case of the *Temple of Preah Vihear* and *Cameroon v. Nigeria*, amongst others. The Court does not require another provisional measure request to issue a provisional measure that it has the right to indicate on its own prerogative.

19. It is also entirely appropriate for the Court to grant provisional measures in this case despite the existence of a current provisional measure requiring non-aggravation by the Parties. As the Court noted in relation to the parties in *Bosnia and Herzegovina v. Yugoslavia*: "it is . . . for the Court to satisfy itself that the second request by Bosnia-Herzegovina, and that of Yugoslavia, are based upon new circumstances"²⁰. And that is certainly the situation before the Court today. In this

¹⁸ R. Kolb, *The International Court of Justice*, 2013, p. 616.

¹⁹ *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, pp. 551-552, para. 59; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Provisional Measures, Order of 15 March 1996, I.C.J. Reports 1996 (I)*, pp. 22-23, para. 41; *Order of 23 July 2018*, para. 76.

²⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993*, p. 337, para. 22.

case, since the Court's Order of July 2018, (i) Qatar resubmitted its submission to the CERD Committee on 29 October 2018²¹; (ii) Qatar began blocking the website by which Qatari citizens can return to the UAE from 1 January 2019²²; and (iii) Qatar's NHRC published its false report in January 2019²³. I should say: one, of its false reports.

20. Having obtained provisional measures for itself with the benefit of a prima facie standard, Qatar now wants the Court to believe that the starting-point for its assessment of the UAE's Request is the Court accepting, in full, Qatar's framing of this dispute. Qatar thus wrongly submits that granting the UAE's Request for provisional measures prejudices this dispute in the UAE's favour. It does not such thing, of course.

21. In contrast, the UAE respectfully submits that the Court should apply the same standards that it applied to Qatar's Request for provisional measures. And on that basis, the Court should grant the provisional measures requested by the UAE.

22. Mr. President, Members of the Court, I thank you for your attention. May I ask that my colleague Professor Reisman be called.

The PRESIDENT: I thank Mr. Volterra. I call upon Professor Reisman. You have the floor.

Mr. REISMAN: Thank you, Mr. President.

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

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

²¹ See *State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, Note Verbale from the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) to the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva, 31 Oct. 2018, transmitting Note Verbale from the Permanent Mission of the State of Qatar to the United Nations Office at Geneva to the Committee on the Elimination of Racial Discrimination, 29 Oct. 2018, p. 2 of Qatar's Note Verbale, Request for the indication for provisional measures submitted by the United Arab Emirates (hereinafter "RPMUAE"), Ann. 21.

²² Documents submitted by Qatar on 30 April 2019 in the context of the UAE's request for provisional measures, Ann. 33.

²³ See National Human Rights Committee, "Gulf Crisis: Continuing human rights violations by the United Arab Emirates, Report on the non-compliance by the United Arab Emirates with the Order of the International Court of Justice six months following its adoption", 23 Jan. 2019, Preliminary Objections of the United Arab Emirates (hereinafter "POUAE"), Vol. IV, Annex 156, pp. 671-689.

2. In my first address, I contrasted the “sequentiality” which a good faith application of CERD Articles 11 to 13 and 22 would produce with Qatar’s actions and argument for concurrency. The Court will recall that in Qatar’s approach, the same Parties, the same dispute with the same facts, the same arguments (on jurisdiction and merits) and the same relief — may proceed simultaneously in two parallel processes.

3. Lest there be any uncertainty that this is Qatar’s objective, while the Committee was proceeding with Qatar’s Communication under Article 11 (1), Qatar applied to the Court on 11 June 2018, under CERD Article 22²⁴. After seising the Court, as set out in the letter at tab 1 and shown on slide 5, Qatar then went back again to the CERD Committee on 29 November 2018 and submitted that “the question of whether the measures targeting Qataris constitute ‘racial discrimination’ within the scope *ratione materiae* of the Convention should be addressed by the Committee itself”²⁵.

4. Mr. President, this is not a jurisdictional or admissibility question nor will it prejudice the eventual decision by the Court on jurisdiction; the central question before you in this provisional measure is whether such parallel proceedings are intended by the CERD and should be allowed. The UAE believes that the terms of the CERD, read in their ordinary meaning, call for sequentiality and eschew concurrence. But even if one were to assume, for the sake of argument, that the terms of the CERD were ambiguous, a proper interpretation of the CERD would take account of a policy frowning on parallel processes of different adversarial dispute resolution procedures. The reasons for this, it will be recalled, are the burden imposed on the adverse party, the danger of conflicting decisions, resulting in the fragmentation of the law (a concern of the Court which President Guillaume shared with the Sixth Committee of the General Assembly)²⁶ and the duplication of costs. Qatar’s submission yesterday that “[b]oth Parties are in exactly the same position” such that “full equality. . . is assured” misses the point. Qatar actively chose concurrent

²⁴ See Application of the State of Qatar (hereinafter “AQ”), 11 June 2018.

²⁵ *State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, Note Verbale, from the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) to the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva, 30 Nov. 2018, transmitting the State of Qatar’s Response to the submission of the United Arab Emirates of 29 Nov. 2018, p. 1.

²⁶ See Address by H.E. Judge Gilbert Guillaume, President of the International Court of Justice, to the United Nations General Assembly, 26 Oct. 2000, p. 5, available at: <https://www.icj-cij.org/files/press-releases/9/2999.pdf>.

and overlapping proceedings. It imposed this duplication on the UAE, which now bears the consequences of abusive duplication inflicted unilaterally upon it by Qatar. In the case before you, there is the additional risk to the Court of having to deal with an authoritative decision of another adversarial dispute-resolving institution in the midst of your own proceeding. And lest you wonder whether the CERD Committee and the *ad hoc* Conciliation Commission are adversarial dispute-resolving mechanisms, I refer you to their recently issued Rules of Procedure which are in your folders at tab 2²⁷. I will discuss them in a moment.

5. Qatar has argued this week that there is only one decision process at play here: the International Court. Who will quibble over whether the Appellate Body is an international court because it is not so named or whether an *ad hoc* committee under the ICSID Convention is not an international tribunal? When it comes to the confusion caused by simultaneous parallel processes, what counts is the function, not the name. What is important is whether an adversarial, international dispute resolution procedure can make an authoritative decision, whether or not the decision is binding. The CERD institutions can do so: Article 22 confirms that disputes with respect to the interpretation or application of the CERD may be settled by the proceedings expressly provided in the Convention.

6. Mr. President, the UAE asks the Court to issue a provisional measures order, noting that Qatar had terminated or withdrawn the CERD proceeding by seising the Court and directing Qatar to desist from its action before the CERD Committee. This would avert the problems associated with parallel processes in this case, but it is not a *lis pendens* order. Qatar devoted a good deal of effort to show the Court that it cannot be done. In search for a *lis pendens* rule, Qatar said it cannot be located in Article 38 of the Statute²⁸. Even if it could, said Qatar, this would not apply because, Qatar says, it requires two judicial tribunals and, in any case, the relief sought is different in each parallel proceeding, the CERD Committee and the proceeding in the Court²⁹. But a more careful consideration of Qatar's Memorial and its complaints in its communication before the CERD shows a remarkable and decisive resemblance.

²⁷ Rules of Procedure Regarding the Hearings Carried Out Pursuant to Article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination, 29 Apr. 2019.

²⁸ CR 2019/6, p. 22, para. 30 (Lowe).

²⁹ CR 2019/6, pp. 23-24, paras. 33-40 (Lowe).

7. Indeed, the virtually total overlap between Qatar's claims of CERD violations before the CERD Committee and before the Court is striking. Before the CERD Committee, Qatar has alleged breaches of CERD Articles 2, 4, 5 and 6³⁰. Indeed, just this past Friday, Qatar alleged before the CERD Committee that Qatari-Emirati families remain separated, that Qatari students continue to be denied access to education in the UAE and that Qataris continue to be denied access to justice in the UAE. The same representatives of Qatar and the UAE in that CERD Committee hearing are present in the Court today.

8. Qatar's case before this Court alleges and makes submissions on these very same alleged breaches. In this Court, Qatar likewise alleges violations of "CERD Articles 2, 4, 5, 6, and 7, as well as the customary international law principle of nondiscrimination"³¹. Even a cursory examination of the table of contents for Qatar's Article 11 (1) Communication of 8 March 2018³², now on slide 6, shows that just as in its CERD Communication, Qatar has claimed before this Court, for example:

- (i) allegations of collective expulsion³³;
- (ii) incitement of racial hatred³⁴; and
- (iii) discriminatory interference with Article 5 rights³⁵.

9. It will not have escaped the Court's notice that the relief sought in this case is that the Court adjudge and declare violations of these very Articles³⁶.

10. Qatar is asking both bodies to interpret law, facts and to take decisions in relation to the meaning and application of the CERD. To give just one example of the risk posed by Qatar's conduct to the systemic integrity of the CERD system, as shown now on slide 7, Qatar filed no less

³⁰ *State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, Qatar's Communication Submitted Pursuant to Article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination, 8 March 2018, RPMUAE, Annex 20, p. 26, para. 57.

³¹ AQ, p. 41, para. 58.

³² *State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, Qatar's Communication Submitted Pursuant to Article 11 of the International Convention on the Elimination of all Forms of Racial Discrimination, 8 March 2018, RPMUAE, Annex 20, pp. (i)-(ii).

³³ AQ, p. 42, para. 59.

³⁴ AQ, pp. 43-45, paras. 60-62.

³⁵ AQ, pp. 45-49, para. 63.

³⁶ Memorial of the State of Qatar (hereinafter "MQ"), submission 1.

than 14 identical witness declarations before both the CERD Committee and this Court³⁷. Qatar is therefore asking two bodies concurrently to determine under the CERD, perhaps conflictually, the weight and value of identical witness testimony in cases involving the very same Parties and claims.

11. Moreover, at the CERD Committee hearing this past Friday, Qatar specifically made submissions on the scope *ratione materiae* of the CERD; that “national origin” encompassed nationality; that local remedies need not be or alternatively had been exhausted; and that the existence of concurrent proceedings was no bar to admissibility. Each one of Qatar’s submissions arises identically before this Court.

12. Mr. President, as for the Court’s competence to issue the provisional order requested by the UAE, in its first round submissions this week, Qatar failed to address the broad language of Statute Article 41. It ignores the broad authority afforded the Court and instead constructs, artificially from prior cases, an ever-narrowing juridical funnel for contextual judgment, a methodology which, in coming years, will all but extinguish the Court’s “power” to deal with the need to shape “any provisional measures which ought to be taken to preserve the respective rights of either party”.

13. Yesterday Qatar argued that “there is no bar on parallel proceedings . . . [and that] the drafter of CERD considered the matter, and they decided expressly to permit them”³⁸. To prove its point, Qatar referred to Article 16 of the CERD, that according to Qatar, the UAE had omitted from its survey.

14. Mr. President, the UAE did not refer to Article 16 for good reason. Article 16 is not relevant to the Court’s consideration of this issue. It is a “without prejudice” clause. It reserves the

³⁷ See *State of Qatar v. United Arab Emirates*, Case No. ICERD-ISC-2018/2, Response of the State of Qatar, 14 Feb. 2019, POUAE, Vol. II, Annex 18; Witness Declaration No. 004, 4 Feb. 2019, MQ, Vol. VII, Annex 165; Witness Declaration No. 030, 30 Jan. 2019, MQ, Vol. VII, Annex 182; Witness Declaration No. 048, 31 Jan. 2019, MQ, Vol. VIII, Annex 193; Witness Declaration No. 073, 6 Feb. 2019, MQ, Vol. VIII, Annex 202; Witness Declaration No. 079, 30 Jan. 2019, MQ, Vol. IX, Annex 206; Witness Declaration No. 093, 29 Jan. 2019, MQ, Vol. IX, Annex 216; Witness Declaration No. 108, 7 Feb. 2019, MQ, Vol. IX, Annex 224; Witness Declaration No. 113, 11 Feb. 2019, MQ, Vol. X, Annex 227; Witness Declaration No. 125, 6 Fe. 2019, MQ, Vol. X, Annex 231; Witness Declaration No. 135, 31 Jan. 2019, MQ, Vol. X, Annex 234; Witness Declaration No. 136, 7 Feb. 2019, MQ, Vol. X, Annex 235; Witness Declaration No. 146, 31 Jan. 2019, MQ, Vol. X, Annex 241; Witness Declaration No. 147, 3 Feb. 2019, MQ, Vol. X, Annex 242; Witness Declaration No. 152, 10 Feb. 2019, MQ, Vol. XI, Annex 245.

³⁸ See e.g. CR 2019/6, p. 25, para. 44 (Lowe).

rights of the States parties which they may have acquired under other treaties. I draw your attention to slide 8, which displays Article 16.

15. As you can see, Mr President, Members of the Court, Article 16 reserves the rights of the Parties to use other procedures for dispute settlement for the same human rights protections provided for under the CERD, such as regional courts of human rights or the ILO implementation machinery if racial discrimination is related to employment and occupation. This is confirmed by the legislative history of the Article³⁹. Nowhere in Article 16 can one find any support for the assertion that multiple procedures for dispute settlement provided in the CERD may be used simultaneously.

16. The CERD Committee and its *ad hoc* Conciliation Commissions are established as dispute-settlement bodies, quasi-judicial in nature, and not limited to fact-finding, as Qatar asserts⁴⁰. Similar to the CERD Committee, which issues legal opinions regarding individual complaints despite the description of its functions as merely issuing “suggestions and recommendations” in Article 14 (7) (b) of the CERD Convention⁴¹, the *ad hoc* Conciliation Commission set up for the resolution of inter-State disputes under CERD makes findings of fact and issues “recommendations” which the Committee communicates to the parties. Those “recommendations” are based on “respect for the Convention” (CERD Articles 12 (1) and 13 (1)) and are by necessity applying, as legal standards, the rights under the CERD. Like the other human rights treaty bodies, the CERD institutions are quasi-judicial bodies, as they make findings of fact and law which are not binding upon States but are anchored in the applicable law.

17. Indeed, Mr. President, the Rules of Procedure of the CERD Committee at tab 2 of your folders are consistent with the understanding of their interpretative functions under the Convention. The amended Rules of Procedure of the CERD Committee, adopted in 1986, had three provisions on inter-State communications (Rules 69 to 71)⁴². But on 29 April 2019, a little over a week ago,

³⁹ United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Sixteenth Session, *Summary Record of the Four Hundred and Twenty-Seventh Meeting*, 28 Jan. 1964, UN doc. E/CN.4/Sub.2/SR.427, 12 Feb. 1964, MQ, 25 Apr. 2019, Vol. III, Annex 79, pp. 12-13 and 16.

⁴⁰ MQ, 25 Apr. 2019, Vol. 4, Annex 121, Section II, para. 4.78.

⁴¹ CERD Committee, Rules of Procedure, UN doc. CERD/C/35/Rev.3, 1986, Rule 95 (3).

⁴² CERD Committee, Rules of Procedure, UN doc. CERD/C/35/Rev.3, 1986, Rules 69-71.

the CERD Committee adopted a special set of Rules of Procedure regarding inter-State communications under Articles 11 to 13⁴³. Seven Rules indicate the Committee's view of its interpretative competence under the Convention. Under Rule 1 (1), the Committee requests parties involved in an inter-State communication to provide it with written submissions regarding issues of jurisdiction or admissibility, including the exhaustion of all available domestic remedies⁴⁴.

18. Rule 6, entitled "Deliberations, Decisions" provides that once the Committee decides that issues of jurisdiction and admissibility are satisfied, it establishes the *ad hoc* Conciliation Commission to address the substance raised in the communication⁴⁵. Otherwise, it informs the States parties concerned that it will not take any further steps⁴⁶.

19. Yesterday, Qatar argued that provisional measures must be for the protection of a right sought in the merits⁴⁷. Mr. President, that simply makes no sense. There is no indication in Statute Article 41 that procedural rights are ineligible for protection.

20. Mr. President, Members of the Court, contemporary military defence planners now find that they must confront the so-called "swarming strategy". Large numbers of inexpensive drones simultaneously attack a target, overwhelming its electronic defences. Mr. President, parallel procedures, if allowed, are the legal analogue of the swarming strategy, overwhelming the defences of a party by multiple, simultaneous procedures. Mr. President, let not swarming be legitimated as a legal strategy.

21. Mr. President, I thank you and Members of the Court for your attention and ask that you call Professor Dan Sarooshi.

The PRESIDENT: I thank Professor Reisman and I will now give the floor to Professor Sarooshi. You have the floor.

⁴³ Rules of Procedure Regarding the Hearings Carried Out Pursuant to Article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination, 29 April 2019.

⁴⁴ Rules of Procedure Regarding the Hearings Carried Out Pursuant to Article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination, 29 April 2019, Rule 1 (1).

⁴⁵ Rules of Procedure Regarding the Hearings Carried Out Pursuant to Article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination, 29 April 2019, Rule 6 (5).

⁴⁶ Rules of Procedure Regarding the Hearings Carried Out Pursuant to Article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination, 29 April 2019, Rule 6 (6).

⁴⁷ See e.g. CR 2019/6, p. 28, para. 5 (Martin).

Mr. SAROOSHI:

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

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

2. I have two points I wish to make today in reply to Qatar's pleading yesterday.

A. Qatar's allegations that the website blocking is justified on security grounds are baseless

3. My first is that Qatar's allegation that the website blocking is justified on security grounds is baseless.

4. Qatar sought to scare the Court away yesterday from examining the blocking of the visa website by making reference to technical terms such as "malware" and "cybersecurity", and alleged that Qatar's blocking was supposedly an exercise of its sovereign right to protect Qatari citizens.

5. But Mr. President, Members of the Court, I should make clear from the outset that there is no security risk at all in relation to the visa application website itself.

6. It is clear that Qatar has been caught red-handed blocking the UAE's visa application website and that this only came to light as a result of the UAE's investigation. Having now been forced to confess to this blocking, Qatar is reduced to seeking to justify its blocking by saying that this website is part of a UAE "network of websites" which it alleges has a security risk⁴⁸. Qatar's advocate said this on a number of occasions yesterday, that there is a "network of UAE websites", and emphasized that.

7. But the true position is as follows.

8. First, it is clear that Qatar does not make any allegation, because it cannot, that the UAE is somehow trying to hack or affect any Qatari Government website.

9. Second — and in some ways most importantly for today — the UAE visa application website is entirely different from the two websites which Qatar has worked hard to identify as having any potential security risk. I emphasize that again — the visa website which is the subject of

⁴⁸ CR 2019/6, p. 13, para. 13 (Al-Khulaifi) and pp. 46-47, para. 28 (Amirfar).

this provisional measure application is entirely separate from the two potential websites with a potential security risk.

10. It is for this reason that Qatar has tried to conflate various UAE Government websites by describing them as a “network”, as I have said, but the truth is that the visa application website by itself poses no risk to a user who accesses the website directly by simply typing the visa web address of echannels.moi.gov.ae into their internet web browser. From slide 10, you will recall that this is precisely the same and indeed the only web address that was publicly announced through the press by the UAE when it launched the visa website on 1 August 2017. This newspaper article which I have shown the Court before and which is dated 1 August 2017 with the title “Apply for UAE visa from comfort of your own home” specifically states the web address when it provided: “Under the new system, people don’t need to physically visit different visa centres in the country [in the UAE]. Instead, they can register at, [and then there is the address:] <https://echannels.moi.gov.ae> and select the services required.”⁴⁹

11. Please bear in mind this web address of the visa website: echannels.moi.gov.ae.

12. Qatar said yesterday that the visa application website poses a “security risk to the Qatari Government” and its citizens. But the true position is that the visa application website — the one address I have just shown you, echannels.moi.gov.ae — accessed directly by users, poses no security risk to a user. Indeed Qatar accepts that there is no problem of any kind with the UAE visa website itself. It accepts — as it must — that the visa web page itself is malware-free, it is virus-free.

13. As such, the only thing that Qatar has come up with is that two separate websites may have a vulnerability and it says that this somehow justifies the blocking of the entirely separate visa website.

⁴⁹ “Apply for UAE visa from comfort of your own home”, *Gulf News*, 1 Aug. 2017, available at: <https://gulfnews.com/uae/government/apply-for-uae-visa-from-comfort-of-your-own-home-1.2067647>.

14. You will see on slide 11 that Qatar’s first so-called “security risk” — and this is taken from the CRA letter that has been referred to now extensively before the Court — is that “basic security protocols require that websites have a valid ‘security certificate’”⁵⁰.

15. Yesterday, Qatar argued that the website www.echannels.ae — and entirely separate website — does not have a valid security certificate and that this allegedly presents a security risk⁵¹. However, what is critical here is that this is not the visa application website. If someone arrives at this separate website, then it redirects users to the visa application website. But once again, this is limited to those cases where someone does not directly go to the visa website. When a user goes directly, there is simply no issue.

16. Indeed, the visa website does have a valid security certificate. Slide 12 shows a screenshot of the visa website security certificate page as taken yesterday. You can see that the slide shows the address of the visa website, which is <https://echannels.moi.gov.ae> and a pop-up window that states that “[t]his certificate is OK”.

17. Turning now to slide 13, we look at Qatar’s second alleged security concern.

18. This does not relate again to the visa application web address of <https://echannels.moi.gov.ae>, but instead relates to the entirely separate UAE Government web address of — and you will see it there in the middle of paragraph 12 — www.gdrfaf.gov.ae website. The CRA’s concern is that this [gdrfaf.gov.ae](http://www.gdrfaf.gov.ae) website is susceptible to being infected by malware and that this would in turn infect the visa application website. The CRA says in paragraph 12 that this could occur, this is the last sentence, “when Qataris access [gdrfaf.gov.ae](http://www.gdrfaf.gov.ae) and link to the Echannels website, the malware can infect their computer”⁵². But even here based on the CRA’s own approach this risk would only apply to those persons who first go to the “gdrfaf” website and from this website they click on a link onto the visa application website. It says nothing whatsoever about the majority of visa applicants who go directly to the visa website to the address

⁵⁰ See Letter from the President of the Communications Regulatory Authority of the State of Qatar to His Excellency Dr. Mohammed Abdulaziz Al-Khulaifi, Legal Advisor to His Excellency Deputy Prime Minister and Minister for Foreign Affairs, 30 Apr. 2019, Documents submitted by Qatar on 30 April 2019 in the context of the UAE’s request for provisional measures, Annex 33, para. 10.

⁵¹ CR 2019/6, p. 49, paras. 32-33 (Amirfar).

⁵² Letter from the President of the Communications Regulatory Authority of the State of Qatar to His Excellency Dr. Mohammed Abdulaziz Al-Khulaifi, Legal Advisor to His Excellency Deputy Prime Minister and Minister for Foreign Affairs, 30 Apr. 2019, Documents submitted by Qatar on 30 April 2019 in the context of the UAE’s request for provisional measures, Annex 33, para. 12.

that was published in the press, which I showed the Court again this morning. As in fact demonstrated in the *Gulf News* article.

19. Finally, Qatar says the third of its so-called “security risks” also relates once again to the separate “gdrfaf” website and not the visa application website. Qatar for good reason did not rely on this yesterday and so I will not consider it further now⁵³. Suffice to say once again that it relates to the entirely separate web address and not to the address of the visa application website.

20. Mr. President, Members of the Court, this so-called security issue is an attempt by Qatar to distract the Court from the real issues in this hearing.

21. Let me be clear. If Qatar had genuinely wanted to protect its citizens from the separate “gdrfaf” website then it had available to it the simplest and most effective option. It could simply have blocked access to this distinct and separate “gdrfaf” website. There was no need to block the visa application website. In fact, the “gdrfaf” website was after all the only website that had the potential security issue identified by Qatar and by blocking access to that separate website it would have ended any potential security risk. This would have been a far more proportionate and considered response by Qatar and it would also have not entirely invalidated or vitiated the UAE’s efforts to provide Qatari citizens with a way to obtain a visa to return to the UAE.

22. The notion contained in paragraph 15 of the CRA letter that Qatar should be able to stipulate the preconditions which the UAE must fulfil before Qatar ordained to unblock access to the website further demonstrates Qatar’s real motives here⁵⁴. This is a blatant attempt by Qatar to maintain the blocking in place for as long as possible to ensure that there is sustained and, I am afraid to say, ongoing fabrication of evidence in the case to ensure a favourable outcome for Qatar if there is an eventual hearing on the merits.

23. I now turn to my second main point: that Qatar’s blocking of the visa website is causing irreparable harm to the UAE’s rights in the present case.

⁵³ See Letter from the President of the Communications Regulatory Authority of the State of Qatar to His Excellency Dr. Mohammed Abdulaziz Al-Khulaifi, Legal Advisor to His Excellency Deputy Prime Minister and Minister for Foreign Affairs, 30 Apr. 2019, Documents submitted by Qatar on 30 April 2019 in the context of the UAE’s request for provisional measures, Annex 33, para. 13.

⁵⁴ See Letter from the President of the Communications Regulatory Authority of the State of Qatar to His Excellency Dr. Mohammed Abdulaziz Al-Khulaifi, Legal Advisor to His Excellency Deputy Prime Minister and Minister for Foreign Affairs, 30 Apr. 2019, Documents submitted by Qatar on 30 April 2019 in the context of the UAE’s request for provisional measures, Annex 33, para. 15.

B. Qatar's blocking of the visa application website is causing irreparable harm to the UAE's rights in the present case

24. Qatar sought valiantly to argue yesterday that the rights to be protected by a provisional measure order can only be the subject of the merits in the case. Professor Volterra established on Tuesday why this is not correct and he made the point again today. Indeed he was joined by my colleague, Professor Reisman.

25. But in any case, given Qatar's website blocking, the UAE's due process rights are inextricably linked to the Court's determination of the dispute between the Parties, namely to ensure the return of Qataris to the UAE. In this context it is critical that this Court should not permit any acts by Qatar which have the effect of manipulating the evidence by changing that fact, the return of Qataris to the UAE.

26. Indeed I cited to the Court on Tuesday the two important cases here of *Burkina Faso/Mali* and *Cameroon v. Nigeria*. I recall that the Court in *Burkina Faso* granted a provisional measure which required that "[b]oth Governments should refrain from any act likely to impede the gathering of evidence material to the present case"⁵⁵; and in *Cameroon v. Nigeria* the Court ordered a provisional measure which required "[b]oth Parties [to] take all necessary steps to conserve evidence relevant to the present case"⁵⁶. This has nothing to do with the determination of the merits of the case per se, the guaranteeing of the procedural rights.

27. The UAE's central request is precisely for the Court to indicate a provisional measure to preserve the evidence in this case and to stop Qatar's blocking of the website. And this is to stop the effect of Qatar's act, which is to fabricate and I am afraid to say manipulate the evidence since it is preventing Qataris being able to re-enter the UAE. This is the very allegation that underlies the dispute between the Parties for determination by this Court on the merits.

28. The matter is also urgent. The UAE only discovered the existence of blocking in January 2019, a few months ago, as a result of its own investigations. With each passing week there are more Qatari citizens who, for example, may have families, they may have property and businesses in the UAE who may be abandoning any hope of returning to the country. They may be

⁵⁵ *Frontier Dispute (Burkina Faso/Republic of Mali), Provisional Measures, Order of 10 January 1986, I.C.J. Reports 1986*, p. 12, para. 32.1.B.

⁵⁶ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Provisional Measures, Order of 15 March 1996, I.C.J. Reports 1996 (I)*, p. 25, para. 49 (4).

changing their lives in some cases simply because they cannot access the UAE visa website from within Qatar. This is a grave matter on which the Court needs to act decisively.

29. Decisive action is necessary to protect the UAE's right to preserve evidence in the case on the merits, but it is also necessary to protect the UAE's right to take action which it considers necessary to comply with the Court's Provisional Measures Order in the case. The Court's Order requires that the UAE ensure that families that include a Qatari be reunited and that Qataris be allowed access to tribunals and other judicial organs of the UAE. On any view, Mr. President and Members of the Court, the visa website should be an important way for the UAE to comply with these provisional measures orders, especially given that the UAE and Qatar maintain no consular or diplomatic mission in each other's territory.

30. But I am afraid to say that Qatar has a completely different view of things. As the next slide recounts, Qatar stated yesterday, and this is at page 44 of the transcript:

“18. . . . Qatar's evidence as set forth in its recent Memorial makes clear that this 'system' — of which the visa application website is one part — is, at its root, a 'security channel' operated on a discriminatory and arbitrary basis *perpetuating* the harm that the UAE has already caused by its simultaneous collective expulsion of Qataris and ban on Qatari entry into the UAE. Indeed, the immigration 'system' is itself a violation of the CERD.”⁵⁷

Mr. President, Members of the Court, this was said before you yesterday.

31. This remarkable statement by Qatar's advocate lays bare the real reason that Qatar has imposed the blocking of the website: it does not at present want Qataris to return to the UAE. Sadly, the reason here would appear to be that this undermines Qatar's argument in this case, that the UAE is alleged to have in place a ban on Qatari citizens returning to the country. The blocking of access to the website from within Qatar also prevents non-Qataris living in Qatar from entering the UAE easily. This blocking clearly has not been done to protect Qataris or indeed others in Qatar, but is action taken as part of the broader political crisis between the two States.

32. This was inadvertently stated by paragraph 5 of the CRA letter as it appears on slide 15. The letter says: “Particularly since the start of the political crisis with the UAE in June 2017”, and then it goes on to say, “In this context”, which is what we are talking about, the visa website, “In this context”, that is the context of the start of the political crisis, “the UAE travel website

⁵⁷ CR 2019/6, p. 13, para. 13 (Al-Khulaifi) and p. 44, para. 18 (Amirfar).

‘echannels.moi.gov.ae’”, that is our visa website, “was identified as having become directed at Qataris sometime in the fall of 2018”. It acknowledges that

“This website is operated by the UAE’s Federal Authority for Identity & Citizenship, a government authority that appears to be connected to the UAE’s Ministry of Interior, and serves as the portal of the UAE government for entry permit applications.”⁵⁸

33. Mr. President, Members of the Court, what Qatar wants in this case is a return to visa-free entry for its citizens into the UAE. But why should the UAE be forced to grant visa-free access when it requires visa entry from citizens of 120 other States?

34. As I established on Tuesday, the visa website is an important way for the UAE to comply with the Court’s Order to ensure that “families that include a Qatari [be] reunited”⁵⁹ and that Qataris be allowed access to tribunals and other judicial organs of the UAE⁶⁰.

35. Qatar has argued that the UAE could choose another method to comply with the Court’s Provisional Measures Order. But it is not for Qatar to tell the UAE how it should comply with the Court’s Order.

36. Indeed as this Court recognized in the *LaGrand* case, a State must comply with the Court’s Orders by “means of its own choosing”⁶¹. This was also reiterated in the *Avena* case. It is left to each sovereign State to consider how best to implement the Court’s provisional measures order according to its own internal laws and policies.

37. Qatar’s view cannot be correct that it should in effect be able to decide how the UAE is to implement the Court’s Provisional Measures Order. This is why the UAE has not accepted Qatar’s proposal that the UAE implement the Court’s Order via a so-called joint committee. This was cited yesterday by Qatar’s counsel and in the UAE letter in response to the Court dated 12 September 2018, the UAE understandably saw Qatar’s manoeuvre here as an attempt “to

⁵⁸ See Letter from the President of the Communications Regulatory Authority of the State of Qatar to His Excellency Dr. Mohammed Abdulaziz Al-Khulaifi, Legal Advisor to His Excellency Deputy Prime Minister and Minister for Foreign Affairs, 30 April 2019, Documents submitted by Qatar on 30 April 2019 in the context of the UAE’s request for provisional measures, Annex 33, para. 5.

⁵⁹ 23 July 2018 Order, para. 79 (1) (i).

⁶⁰ See 23 July 2018 Order, para. 79 (1) (iii).

⁶¹ *LaGrand (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, p. 466, para. 128 (7); see also *Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, I.C.J. Reports 2004 (I), p. 72, para. 153 (9).

involve itself in the UAE's administration of its laws and rules, which constitutes an improper effort to infringe on the UAE's sovereignty and internal affairs"⁶².

38. The fact that Qatar did not mention the blocking of its website in its 417-page Memorial — not once — filed on 25 April 2019 — five days before its submission — is particularly telling.

39. Regrettably, what Qatar did say in its Memorial about the website was misleading. It said that the website did not work effectively for the purpose of the UAE's compliance with the Court's Order on Provisional Measures in this case⁶³. Slide 16 shows Qatar's statement in its Memorial at paragraph 5.78. It reads: "The hotline process — whether by phone or via the website, [there is an expressed acknowledgment of the website, but no mention of blocking] — is entirely misconceived for the purpose of complying with the Order." Let me pause here: it does not say, of course, that it is effectively been applied, and it goes on to say: "*Even if* it worked effectively, the temporary visits that it is designed to facilitate would not qualify as 'reunification', nor a genuine 'opportunity' to continue with education in the UAE, nor has it enhanced in any way 'access to justice'."

40. But this is to ignore entirely the very category of Qatari citizens who are the direct target of the Court's first Provisional Measures Order: those Qataris who have UAE resident status and who simply want to apply for a re-entry permit using the visa website to return to the country. The only thing preventing those people from obtaining a visa from within Qatar is the blocking by the Government of their access to the visa website.

41. The Court is respectfully requested not to tolerate such behaviour and to protect the UAE's rights by the indication of the second requested provisional measure.

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

⁶² See Letter from Saeed Ali Yousef Alnowais, Agent of the United Arab Emirates, to H.E. Mr. Philippe Couvreur, Registrar of the International Court of Justice, 12 Sept. 2018, Documents submitted by Qatar on 30 April 2019 in the context of the UAE's Request for provisional measures, Ann. 24, p. 2.

⁶³ MQ, pp. 278-279, para. 5.78.

The PRESIDENT: I thank Professor Sarooshi and I will now give the floor to Dr. Fogdestam-Agius.

Ms FOGDESTAM-AGIUS:

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

1. Mr. President, Members of the Court, I am honoured to present the UAE's second oral submission regarding its third provisional measures request.

2. Mr. President, in the first round, the UAE pointed to incontrovertible evidence that not only contradicted Qatar's claims in these proceedings, but also put the lie to the proclamations of Qatar's NHRC.

3. Qatar did not defend the accuracy of either those challenged witness statements or of the NHRC. Instead, Qatar irrelevantly objected that it had not submitted NHRC's January report as evidence in this case, even though it has submitted and relied on many other NHRC reports throughout this proceeding — as if its omission of the January report did not simply confirm the NHRC's unreliability further. And Qatar parrots that the NHRC holds a Grade "A" accreditation from the Global Alliance of National Human Rights Institutions, which I shall refer to as the "Global Alliance" from here on.

4. What really matters is that the January 2019 NHRC report was sent to 400 international organizations. This was one of the provocative and harmful acts that motivated the UAE's decision to make this Request. The UAE's Request seeks protection from events that take place outside of this Great Hall, but that nevertheless affect the integrity of these proceedings.

5. Contrary to what counsel for Qatar claims, these matters cannot await the merits stage. Qatar submits that the only remedy for when one party manufactures and tampers with evidence is a judgment on the merits⁶⁴. But the Court must have the interim power to protect its ability to reach an accurate decision without the contamination of evidentiary frauds, like Qatar's submission in the *Qatar v. Bahrain* case.

⁶⁴ CR 2019/6, p. 46, para. 26 (Amirfar).

6. Counsel for Qatar inaccurately described the UAE's proof of Qatar's manipulation of evidence as "wholly unparticularized"⁶⁵. This is not the case. The UAE has taken the Court to examples where Qatar through its conduct has manipulated evidence of relevance to the proceedings before this Court. For example, the Court will recall slide 18, with a statement of a witness who has mimicked, word-for-word, Al Jazeera's reporting and the NHRC's position that the UAE's immigration procedures for Qatari citizens are nothing more than a "face-saving" exercise.

7. In the precise same way, as seen on a series of slides — which in the interest of time, I will not spend much time on — slides 19 to 27, Qatar's witness declarations show 37 witnesses who simply chose not to refer to either the hotline or the website often on the false belief — enflamed by the NHRC and Qatari State-controlled media — that the UAE's immigration procedures are too burdensome; do not work; or pose a front for impermissible surveillance⁶⁶. Unsurprisingly, Qatari citizens believe the limited and biased sources of news their Government provides them.

8. Similarly, I would like to direct the Court to exhibit B of Annex 272 submitted with Qatar's Memorial, provided in excerpt on slide 28. This spreadsheet is claimed to list

⁶⁵ CR 2019/6, p. 21, para. 22 (Lowe).

⁶⁶ See Witness Declaration No. 004, 4 Feb. 2019, MQ, Vol. VII, Annex 165, paras. 15 and 19; Witness Declaration No. 009, 4 Apr. 2019, MQ, Vol. VII, Annex 169, para. 19; Witness Declaration No. 012, 28 Mar. 2019, MQ, Vol. VII, Annex 171, paras. 10-11; Witness Declaration No. 018, 27 Mar. 2019, MQ, Vol. VII, Annex 173, para. 12; Witness Declaration No. 020, 17 Apr. 2019, MQ, Vol. VII, Annex 174, para. 15; Witness Declaration No. 029, 19 Mar. 2019, MQ, Vol. VII, Annex 181, para. 10; Witness Declaration No. 030, 30 Jan. 2019, MQ, Vol. VII, Annex 182, para. 18; Witness Declaration No. 036, 2 Apr. 2019, MQ, Vol. VIII, Annex 185, para. 25; Witness Declaration No. 037, 6 Mar. 2019, MQ, Vol. VIII, Annex 186, paras. 12-17; Witness Declaration No. 041, 24 Mar. 2019, MQ, Vol. VIII, Annex 189, paras. 13-14; Witness Declaration No. 046, 19 Mar. 2019, MQ, Vol. VIII, Annex 191, para. 19; Witness Declaration No. 047, 8 Apr. 2019, MQ, Vol. VIII, Annex 192, para. 17; Witness Declaration No. 048, 31 Jan. 2019, MQ, Vol. VIII, Annex 193, para. 24; Witness Declaration No. 051, 27 Mar. 2019, MQ, Vol. VIII, Annex 194, para. 10; Witness Declaration No. 053, 21 Mar. 2019, MQ, Vol. VIII, Annex 195, para. 9; Witness Declaration No. 056, 18 Mar. 2019, MQ, Vol. VIII, Annex 196, para. 29; Witness Declaration No. 058, 4 Apr. 2019, MQ, Vol. VIII, Annex 197, para. 9; Witness Declaration No. 080, 17 Mar. 2019, MQ, Vol. IX, Annex 207, para. 26; Witness Declaration No. 086, 21 Mar. 2019, MQ, Vol. IX, Annex 211, para. 13; Witness Declaration No. 092, 27 Mar. 2019, MQ, Vol. IX, Annex 215, para. 14; Witness Declaration No. 093, 29 Jan. 2019, MQ, Vol. IX, Annex 216, paras. 28-29; Witness Declaration No. 096, 27 Mar. 2019, MQ, Vol. IX, Annex 217, para. 22; Witness Declaration No. 097, 31 Mar. 2019, MQ, Vol. IX, Annex 218, para. 18; Witness Declaration No. 098, 27 Mar. 2019, MQ, Vol. IX, Annex 219, para. 17; Witness Declaration No. 100, 14 Mar. 2019, MQ, Vol. IX, Annex 220, para. 21; Witness Declaration No. 108, 7 Feb. 2019, MQ, Vol. IX, Annex 224, paras. 19-20; Witness Declaration No. 123, 3 Apr. 2019, MQ, Vol. X, Annex 229, para. 12; Witness Declaration No. 124, 25 Mar. 2019, MQ, Vol. X, Annex 230, paras. 24-25; Witness Declaration No. 135, 31 Jan. 2019, MQ, Vol. X, Annex 234, paras. 23-24; Witness Declaration No. 145, 20 Mar. 2019, MQ, Vol. X, Annex 240, para. 18; Witness Declaration No. 161, 31 Mar. 2019, MQ, Vol. XI, Annex 247, para. 25; Witness Declaration No. 167, 11 Mar. 2019, MQ, Vol. XI, Annex 252, para. 18; Witness Declaration No. 174, 3 Apr. 2019, MQ, Vol. XI, Annex 258, para. 15; Witness Declaration No. 177, 2 Apr. 2019, MQ, Vol. XI, Annex 260, para. 16; Witness Declaration No. 179, 4 Apr. 2019, MQ, Vol. XI, Annex 262, para. 12; Witness Declaration No. 183, 3 Apr. 2019, MQ, Vol. XII, Annex 266, para. 14; Witness Declaration No. 188, 4 Apr. 2019, MQ, Vol. XII, Annex 270, para. 11.

975 purportedly verified complaints made by Qataris for violations of the CERD⁶⁷. Qatar has always claimed that it is the so-called “travel ban” that leads to all CERD violations⁶⁸. Yet, out of the 975 allegedly verified complaints, 790 individuals never even contacted the hotline to seek to travel to the UAE⁶⁹. In 129 further cases, it is “unknown” whether or not the person had contacted the hotline. In total, then, Qatar has gathered only 56 Qatari citizens who claim to have suffered harms after they actually applied to use the immigration system created by the UAE precisely to protect their rights. Qatar is trying to puff these 50-odd complaints into close to a thousand by a conjuring trick.

9. In reality, these individuals needed to meet visa requirements no more onerous than those applicable for travel to Qatar, or for that matter, a number of other countries. As the Court can see on slides 29 through 44, many States require travellers to submit information such as passport details, birth certificates, itinerary, police records, details about the reasons for the visit and the duration of the same. This is standard. It is not a violation of the CERD.

10. By feeding misconceptions among its citizens about the effectiveness of the UAE’s measures, Qatar may succeed in manufacturing such statistics as those it relies upon in its Memorial, alleging that the number of Qatari citizens travelling to and from the UAE has dropped dramatically⁷⁰.

11. Further indicia suggest that Qatar is directing or exhorting certain behaviour from its citizens. Last year, counsel for the UAE in this Hall pointed out that there had been a dramatic decrease in complaints to the NHRC, with only a handful of cases filed in the ten months preceding the hearing in June 2018⁷¹. In contrast, the NHRC claims that in the six months preceding its January 2019 report, it received 1,099 complaints, of which 745, in the NHRC’s assessment, fell within the scope of the Court’s Order. Conveniently for Qatar’s position before this Court, each

⁶⁷ Affidavit, State of Qatar Compensation Claims Committee, 16 Apr. 2019, MQ, Vol. XII, Annex 272, exhibit B.

⁶⁸ MQ, pp. 3-5, paras. 1.5-1.10.

⁶⁹ Affidavit, State of Qatar Compensation Claims Committee, 16 Apr. 2019, MQ, Vol. XII, Annex 272.

⁷⁰ MQ, p. 263, para. 5.48.

⁷¹ CR 2018/15, pp. 29-32, paras. 14-17 (Buderi).

and every one of the 12 purported witnesses, as well as many of the 109 witnesses with declarations in this proceeding⁷², invoked the Court's Order.

12. Contrary to what Qatar contends⁷³, the Court does not need to prejudge the merits of this case. The Court does not need to decide whether or not the UAE has violated the CERD. That is a question for the merits. The Court need only decide: can the NHRC continue to propagandize, such as it did to 400 international organizations in January 2019, that the UAE has violated the Court's Order on multiple occasions before this Court has even made such a determination? It is not for either Party — or their instrumentalities — to determine whether there has been a breach of a provisional measures order indicated by the Court⁷⁴. If there had been such a violation, a plausible response of this Court is a declaration of non-compliance, which is considered a sufficiently effective sanction because it carries significant reputational costs⁷⁵. The UAE has a right — a plausible right directly connected to this case — not to be subjected to unilateral statements averring its guilt. These statements cause prejudice to the UAE and are exacerbated by the fact that the NHRC — at least formally — is an accredited body.

13. On this point, I invite the Court to consider the question of the NHRC's accreditation. In its first round submissions, Qatar repeatedly informed the Court that the NHRC was accredited Grade "A". Qatar appeared to take the position that once accredited, always creditable. Qatar failed to inform you that the NHRC's accreditation has not been reviewed by the Global Alliance since November 2015. Notably, the conduct of which I have spoken all occurs after this.

14. Moreover, in contrast to how the NHRC has been described by counsel for Qatar, at its November 2015 review, the Global Alliance's Sub-Committee on Accreditation criticized the NHRC for a number of serious flaws that it said affected the NHRC's independence from the

⁷² See e.g. Witness Declaration No. 018, 27 Mar. 2019, MQ, Vol. VII, Annex 173, para. 12; Witness Declaration No. 096, 27 Mar. 2019, MQ, Vol. IX, Annex 217, para. 22; Witness Declaration No. 097, 31 Mar. 2019, MQ, Vol. IX, Annex 218, para. 18; Witness Declaration No. 124, 25 Mar. 2019, MQ, Vol. X, Annex 230, para. 24.

⁷³ CR 2019/6, pp. 19-20, para. 16 (Lowe).

⁷⁴ P. Palchetti, "Responsibility for breach of provisional measures of the ICJ: Between protection of the rights of the parties and respect for the judicial function", 1 *Rivista di Diritto Internazionale* (2017) 5, p. 14.

⁷⁵ P. Palchetti, "Responsibility for breach of provisional measures of the ICJ: Between protection of the rights of the parties and respect for the judicial function", 1 *Rivista di Diritto Internazionale* (2017) 5, p. 18.

Government and State of Qatar⁷⁶. The Sub-Committee's review is enclosed at tab 4 of your folders and summarized on slide 45. The Sub-Committee recommended, *inter alia*, that the NHRC improve the process for selecting and appointing its members so as to be transparent, made on the basis of merit and allowing for diversity. Equally, security of tenure was deemed at risk, because the law did not appropriately define grounds for termination, which is effected through a decree of Qatar's Emir. This left the dismissal procedure open to abuse. Also, the law governing the NHRC did not address the risk of conflict of interest. These are all serious issues that may directly affect the independence of a governmental agency.

15. Unsurprisingly, Qatar's NHRC's grade with the Global Alliance has been challenged by independent third parties⁷⁷. On slide 46, you will find an excerpt from a report submitted to the United Nations Human Rights Council by an NGO called the MENA Rights Group, enclosed at tab 5⁷⁸. This criticism is reported by the United Nations Human Rights Council in the context of Qatar's ongoing Universal Periodic Review. The Human Rights Council report, enclosed in your folders at tab 6, also contains an apologetic and polite review by the NHRC of the human rights situation in Qatar, underscoring its lack of independence from the policies and interests of the State⁷⁹. On this basis, civil society organizations have actively advocated that the NHRC be stripped of its Grade "A"⁸⁰.

16. In any event, accreditation under the Paris Principles does not translate into a stamp of approval of the truthfulness and quality of the output of that body. It does not render the NHRC immune to criticism or scrutiny and it does not give the NHRC a "get out of jail free" card when it

⁷⁶ See International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), Geneva, 16-20 Nov. 2015, pp. 37-38.

⁷⁷ See United Nations General Assembly, "Summary of Stakeholders' submission on Qatar: Report of the Office of the United Nations High Commissioner for Human Rights", Human Rights Council, Working Group on the Universal Periodic Review, 33rd Session, UN doc. A/HRC/WG.6/33/QAT/3, 21 Feb. 2019, para. 25, available at: <https://undocs.org/A/HRC/WG.6/33/QAT/3>.

⁷⁸ MENA Rights Group, Joint Submission No. 5 to the Human Rights Council in connection with the Universal Periodic Review of May 2019, p. 3, available at: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=6577&file=EnglishTranslation>.

⁷⁹ See United Nations General Assembly, "Summary of Stakeholders' submission on Qatar: Report of the Office of the United Nations High Commissioner for Human Rights", Human Rights Council, Working Group on the Universal Periodic Review, 33rd Session, UN doc. A/HRC/WG.6/33/QAT/3, 21 Feb. 2019, para. 25, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/046/62/PDF/G1904662.pdf?OpenElement>.

⁸⁰ See "Qatar: National Human Rights Committee's subordination to the executive undermines its capacity to publicly and freely address human rights violations", Alkarama, available at: <https://www.alkarama.org/en/articles/qatar-national-human-rights-committees-subordination-executive-undermines-its-capacity>.

fabricates fraudulent evidence. The Court will need to assess for itself, in light of the evidence before it, what credence to assign to the NHRC's work and the January 2019 report, in particular. Only if the Court addresses this now will it be in a position to preserve the integrity of its proceedings from being tainted.

17. The Court will no doubt recall this slide 47, which Professor Volterra presented to it in the first round, showing the non-existent report by a non-existent fact-finding mission, affixing the portcullis seal of the British Parliament in an attempt to lend legitimacy.

18. Counsel for Qatar argued yesterday that the UAE seeks to silence the voice of free media⁸¹. The UAE seeks no such thing.

19. The UAE does ask for protection from falsified and artificially manufactured evidence that is directly relevant to the dispute before this Court. It asks for Qatar to stop manipulating the media channels it controls to disseminate false accusations.

20. The Agent for Qatar asserted yesterday that Al Jazeera is "widely recognized as . . . impartial"⁸². Apart from the fact that there is some difference between the English and Arabic language versions of that channel, it is abundantly clear that Qatar controls Al Jazeera. I invite the Court to study, at tab 7 of your folders, corporate documents of Al Jazeera. In particular, Article 24 of the Articles of Association of Al Jazeera provides that Qatar's Emir may issue general directives regarding general policy.

21. Qatari press is not free. On slide 48 and at tab 8, there is an excerpt from an article reporting that Qatar in 2016 closed down one of the few independent media in its country, leaving such channels that the Government itself controls.

22. Qatar made clear yesterday that it will not take any action in relation to the press⁸³. In other words, there is no end in sight of the irreparable harm that Qatar's conduct causes the UAE. Provisional measures preserving the UAE's rights are urgently needed.

Mr. President, Honourable Members of the Court, this concludes my submissions. I am grateful for your attention. May I ask that you please invite Professor Volterra to resume the floor.

⁸¹ CR 2019/6, p. 52, para. 40 (Amirfar).

⁸² CR 2018/6, p. 14, para. 15 (Al-Khulaifi).

⁸³ CR 2019/6, p. 20, para. 17 (Lowe).

The PRESIDENT: I thank Dr. Fogdestam-Agius and I now call on Professor Volterra, and I wish to draw his attention to the fact that we have only ten minutes left and therefore it is up to him to choose how he intends to use those ten minutes.

M. VOLTERRA : Merci.

V. CONCLUSION

1. Monsieur le président, Mesdames et Messieurs de la Cour, j'ai maintenant l'honneur de récapituler les arguments soutenus par les Emirats. Mes observations ne dureront qu'une dizaine de minutes et, ensuite, l'agent des Emirats conclura en quelques minutes.

A. Le «test des balances de la justice» n'est pas une condition au prononcé de mesures conservatoires

2. Je voudrais tout d'abord revenir sur l'allégation du Qatar selon laquelle les mesures conservatoires demandées par les Emirats créeraient un «préjudice disproportionné et irréparable» au Qatar⁸⁴. Le Qatar a en effet soutenu, dans sa plaidoirie d'hier, que le prononcé de mesures conservatoires était conditionné à un soi-disant «test des balances de la justice»⁸⁵. Ce test aurait démontré, toujours selon le Qatar, que, en l'espèce, l'équilibre des Parties serait rompu si de telles mesures étaient prononcées.

3. Monsieur le président, il me semble nécessaire de souligner que le Qatar tente ici d'ajouter une condition au prononcé de mesures conservatoires, qui n'existe nulle part. Cette condition n'apparaît ni dans le texte de l'article 41 ni dans la jurisprudence de la Cour. D'ailleurs, cette condition supplémentaire ne peut pas exister, pour une raison très simple. Le but des mesures conservatoires, en effet, n'est pas d'atteindre un compromis entre les parties en attendant un règlement du litige sur le fond. Bien au contraire, le prononcé des mesures conservatoires «a pour objet de sauvegarder, dans l'attente de sa décision sur le fond de l'affaire, les droits de chacune des parties»⁸⁶. Il s'agit donc bien de *préserver* les droits des parties. Ni plus ni moins.

⁸⁴ CR 2019/6, p. 57, par. 5 (Klein).

⁸⁵ CR 2019/6, p. 57-58, par. 3-6 (Klein).

⁸⁶ Ordonnance du 23 juillet 2018, p. 421-422, par. 43.

4. En réalité, ces soi-disant droits du Qatar, que celui-ci veut faire peser dans la balance, sont exactement le même genre de droits que le Qatar refuse de reconnaître aux Emirats. Sans mener d'analyse particulière, le Qatar a même qualifié les droits des Emirats d'«évanescents», alors que les droits du Qatar seraient par contraste — pour le Qatar — «très réel[s] et concret[s]». En d'autres termes, selon le Qatar, ses droits valent mieux que ceux des Emirats. Cela ne constitue pas une analyse des principes ou droits, mais simplement l'expression d'un jugement éminemment subjectif. A ce niveau-là, il n'y a même plus besoin de balance.

B. Remarques conclusives

5. Monsieur le président, Mesdames et Messieurs de la Cour, depuis le début de la procédure, les Emirats sont soucieux de pouvoir parvenir à un règlement du litige entre les deux Parties. A cette fin, les Emirats ont toujours agi de manière responsable et ont toujours respecté les règles procédurales.

6. Tel n'est pas le cas pour le Qatar. Comme mes collègues l'ont exposé dans leurs plaidoiries cette semaine, en effet, le comportement du Qatar, tout au long de cette affaire, constitue un abus de procédure.

7. Comme cela a été démontré par les Emirats au cours de ces débats, les Emirats se trouvent aujourd'hui dans une situation inhabituelle du fait de l'existence aujourd'hui de deux procédures contentieuses parallèles devant le CERD et devant cette Cour. Cette double procédure, programmée par le Qatar, porte clairement atteinte aux droits procéduraux des Emirats. Les Emirats se retrouvent en effet à devoir se défendre sur plusieurs fronts de manière simultanée. Les Emirats n'ont découvert que récemment que le Qatar avait bloqué le site Internet de demandes de visas émiratis. De la même manière, ce n'est d'ailleurs que très récemment, dans sa réponse devant le CERD en février 2019, qu'il est apparu que le Qatar continuait à inventer des preuves frauduleuses en soutien à ses fausses accusations. Ce n'est donc, à partir de cette date, que les Emirats ont pu commencer à mettre en place leur défense.

8. En outre, le Qatar continue de mépriser les règles de procédure dans cette affaire à travers son approche de traitement des preuves. Comme je l'ai exposé avant-hier, le Qatar a une réputation établie concernant la fabrication de preuves, comme cela a été le cas dans l'affaire *Qatar c. Bahreïn*

— qui n'est pas du tout si ancienne que le Qatar le prétend. Dans notre affaire, que ce soit par le blocage du site Internet de demandes de visas, ou par la falsification du rapport du comité des droits de l'homme qatari suite à la visite de quelques parlementaires britanniques, le Qatar continue de manipuler des preuves. Cela porte évidemment préjudice aux Emirats.

9. Monsieur le président, face à cette attitude du Qatar, la demande de mesures conservatoires des Emirats est justifiée. Comme cela a été démontré par les Emirats durant le premier tour des plaidoiries, les actes du Qatar aggravent le différend et compromettent les chances de succès d'une résolution du différend. Je n'y reviendrai donc pas. Mais je souhaite ici répondre aux critiques du Qatar entendues hier, à savoir que la reconnaissance par les Emirats de la compétence *prima facie* de la Cour, en vue de demander des mesures conservatoires, serait incohérente avec la position que tenaient les Emirats précédemment⁸⁷. Il n'y a aucune incohérence de la part des Emirats. Les Emirats ne font ici qu'ajuster leur position face à l'aggravation progressive du différend provoquée par le Qatar, et face au mépris croissant de leurs droits procéduraux par le Qatar.

10. Pour clore mon intervention, j'aimerais revenir un instant sur une des accusations qui a été largement relayée par le Qatar, ses médias et ses institutions, concernant les soi-disant mesures d'interdiction de voyager sur le territoire émirati qui auraient été prises par les Emirats.

11. Monsieur le président, Mesdames et Messieurs de la Cour, je vous invite donc à regarder la diapositive n° 50. Sur cette diapositive, vous pouvez apercevoir le système d'application en ligne pour les visas de la zone Schengen contenant certaines des informations requises par le groupe Schengen pour obtenir un visa Schengen⁸⁸. Et maintenant, je vous invite à les comparer avec les informations qui sont requises par les Emirats pour obtenir un visa, à savoir une copie du passeport, un certificat de naissance et le billet d'avion aller et retour. Voilà ! Cela a même été décrit par un des 37 témoins cités par le Qatar dans son mémoire. Ce témoin a ensuite précisé qu'il trouvait ce procédé émirati «compliqué et pénible» et qu'il avait par conséquent refusé de suivre ces

⁸⁷ CR 2019/6, p. 10, par. 4 (Al-Khulaifi).

⁸⁸ Voir le site Internet Schengen visa info, "Schengen Visa Application Requirements", consultable à l'adresse <https://www.schengenvisainfo.com/schengen-visa-application-requirements/>.

instructions⁸⁹. Voilà, Monsieur le président, un exemple de la soi-disant «détresse psychologique»⁹⁰ décrite dans le mémoire du Qatar et qui, selon lui, était imposée par les Emirats envers les citoyens qataris. Lorsque vous serez amenés à délibérer sur les demandes du Qatar concernant les conséquences des mesures prises par les Emirats sur les citoyens qataris, je vous demande de bien vouloir vous rappeler ce témoignage. Monsieur le président, Mesdames et Messieurs de la Cour, je vous remercie pour votre attention et je vous prie de bien vouloir inviter l'agent des Emirats pour présenter en quelques minutes les dernières observations orales des Emirats arabes unis.

The PRESIDENT: I thank Mr. Volterra and I now give the floor to the Agent of the United Arab Emirates, Dr. Hissa Abdullah Ahmed Al-Otaiba. You have the floor, Madam.

Ms AL-OTAIBA:

VI. SUBMISSIONS OF THE AGENT

1. Thank you, Mr. President and distinguished Members of the Court. It is my honour to close the oral submissions of the United Arab Emirates. The oral pleadings made by both Parties during this hearing have confirmed the submissions of the United Arab Emirates. They have shown that Qatar's claims in this case do not reflect the real dispute between the Parties. They confirm that the United Arab Emirates has committed no racial discrimination.

2. In June 2017, the United Arab Emirates undertook a series of legal measures against Qatar's Government, in order to put an end to Qatar's long-standing support of terrorist groups. As we have established, Qatar has chosen not to stop its unlawful activities. Instead, Qatar has unfortunately taken a series of actions that put at risk a great many vulnerable people in the Gulf and beyond. Qatar's actions are also causing irreparable prejudice to the rights of the United Arab Emirates in this case. As the submissions in this hearing have demonstrated, Qatar's acts significantly aggravated the dispute between the Parties and make it more difficult to resolve.

3. Qatar has misused the CERD Convention. It has initiated two abusive parallel legal proceedings against the United Arab Emirates. These proceedings involve the same Parties, the

⁸⁹ Witness Declaration No. 012, 28 mars 2019, mémoire du Qatar, vol. VII, annexe 171, paragraphes 10 et 11 de la déclaration de témoin. [*Traduction libre.*]

⁹⁰ Mémoire du Qatar, par. 5.103.

same facts and the same arguments. In addition, as was confirmed by the United Arab Emirates' submissions, Qatar is using its national institutions and media outlets to fabricate and to disseminate false accusations against the United Arab Emirates regarding the issues in dispute before the Court. You have unrefuted evidence that shows that Qatar's accusation that the UAE expelled Qatari citizens is false. That Qatar's accusation that the UAE is preventing Qatari citizens from returning to its territory is false. That Qatari national institutions have fabricated fraudulent evidence. All of these things have been proved.

4. When forced by the evidence, Qatar admitted that it has been secretly blocking Qatari citizens from the UAE visa website. The evidence confirms that Qatar is intentionally impairing the efforts of the United Arab Emirates to assist Qatari citizens. Qatar has sneakily been sabotaging the UAE's efforts to comply with the Court's Order on provisional measures. The UAE only discovered that Qatar was blocking the visa website and that Qatar was continuing to fabricate prejudicial evidence during the preceding few months. The UAE has thus acted with due haste in requesting provisional measures.

5. When the Court considered Qatar's Request for provisional measures, the Court applied certain factual and legal standards. Now, Qatar is asking you to apply different factual and legal standards when you consider the UAE's Request. My country, of course, has confidence in the Court. We trust that the Court will do the same thing for the UAE that it did for Qatar. All we ask is that, pending its final decision, the Court protects the rights of the UAE with equal consideration.

6. For all the reasons set out by the United Arab Emirates (the "UAE") in its 22 March 2019 Request for the Indication of Provisional Measures to Preserve the United Arab Emirates' Procedural Rights and to Prevent Qatar from Aggravating or Extending the Dispute and in its oral pleadings at the Hearing held from 7 to 9 May 2019, the UAE respectfully requests that the Court 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.

7. Mr. President, Honourable Members of the Court, this concludes the second round of submissions of the United Arab Emirates. I thank you for the careful attention you have devoted to this urgent matter. I also thank all members of the Registry and the interpreters for their dedicated work.

The PRESIDENT: I thank the Agent of the United Arab Emirates. The Court takes note of the provisional measures requested by the United Arab Emirates, that you have just read out on behalf of your Government. The Court will meet again at 4.30 p.m. this afternoon to hear the second round of oral observations of Qatar. The sitting is adjourned.

The Court rose at 11.40 a.m.
