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Press Release

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

The Court rejects the Request for the indication of provisional measures submitted by the United Arab Emirates

THE HAGUE, 14 June 2019. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today delivered its Order on the Request for the indication of provisional measures submitted by the United Arab Emirates in the case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates).

The operative clause of the Order reads as follows:

“The Court, by fifteen votes to one, rejects the Request for the indication of provisional measures submitted by the United Arab Emirates on 22 March 2019.”

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On 11 June 2018, Qatar had instituted proceedings against the United Arab Emirates (hereinafter the “UAE”) with regard to alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (hereinafter “CERD” or the “Convention”). The Application was accompanied by a Request for the indication of provisional measures. By an Order dated 23 July 2018, the Court indicated certain provisional measures directed at the UAE and ordered that both Parties refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve. On 22 March 2019, the UAE in turn submitted a Request for the indication of provisional measures, in order to “preserve the UAE’s procedural rights” and to “prevent Qatar from further aggravating or extending the dispute between the Parties pending a final decision in th[e] case”.

Reasoning of the Court

1. Prima facie jurisdiction

The Court observes that it may indicate provisional measures only if there is, prima facie, a basis on which its jurisdiction could be founded, but need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case. That is so whether the request for the indication of provisional measures is made by the applicant or by the respondent in the proceedings on the merits. The Court recalls that, in its Order of 23 July 2018 indicating provisional measures in the present case, it concluded that, “prima facie, it has jurisdiction pursuant to Article 22 of CERD to deal with the case to the extent that the dispute between the Parties relates to the ‘interpretation or application’ of the said Convention”. The Court sees no reason to revisit its previous finding in the context of the present Request.

2. The provisional measures requested by the UAE

The Court recalls that its power to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights of the parties in a case, pending its decision on the merits thereof. It follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong to either party. Therefore, the Court may exercise this power only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible. It observes that, at this stage of the proceedings, it is not called upon to determine definitively whether the rights which the UAE wishes to see protected exist; it need only decide whether the rights claimed by the UAE, and for which it is seeking protection, are plausible rights, taking account of the basis of the Court’s prima facie jurisdiction in the present proceedings. Thus, these alleged rights must have a sufficient link with the subject of the proceedings before the Court on the merits of the case.

With respect to the first provisional measure requested, namely that the Court order that Qatar immediately withdraw its Communication submitted to the Committee on the Elimination of Racial Discrimination (hereinafter the “CERD Committee”) and take all necessary measures to terminate consideration thereof by that Committee, the Court considers that this measure does not concern a plausible right under CERD, but rather the interpretation of the compromissory clause in Article 22 of CERD and the permissibility of proceedings before the CERD Committee when the Court is seised of the same matter. The Court has already examined this issue in its Order of 23 July 2018, in which it decided that it “need not make a pronouncement [thereon] at this stage of the proceedings”. The Court does not see any reason to depart from these views.

Regarding the second measure requested — that “Qatar immediately desist from hampering the UAE’s attempts to assist Qatari citizens, including by un-blocking in its territory access to the website by which Qatari citizens can apply for a permit to return to the UAE” — the Court considers that this measure relates to obstacles allegedly created by Qatar to the implementation by the UAE of the provisional measures indicated in the Order of 23 July 2018. It does not concern plausible rights of the UAE under CERD which require protection pending the final decision of the Court in the case. As the Court has already stated, “[t]he judgment on the merits is the appropriate place for the Court to assess compliance with the provisional measures”.

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

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

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

Composition of the Court

The Court was composed as follows: 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.

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

A summary of the Order appears in the document entitled “Summary No. 2019/3”, to which summaries of the opinions and declarations are annexed. This press release, the summary and the full text of the Order are available on the Court’s website (www.icj-cij.org), under the heading “Cases”.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized

United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the “World Court”, it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Court (ICC, the only permanent international criminal court, which was established by treaty and does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an international judicial body with an independent legal personality, established by the United Nations Security Council upon the request of the Lebanese Government and composed of Lebanese and international judges), the International Residual Mechanism for Criminal Tribunals (IRMCT, mandated to take over residual functions from the International Criminal Tribunal for the former Yugoslavia and from the International Criminal Tribunal for Rwanda), the Kosovo Specialist Chambers and Specialist Prosecutor’s Office (an ad hoc judicial institution which has its seat in The Hague), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

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