



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Committee on the Elimination of Racial Discrimination

**Jurisdiction of the Inter-State communication submitted
by Qatar against the United Arab Emirates *****

<i>Applicant State:</i>	Qatar
<i>Respondent State:</i>	The United Arab Emirates
<i>Date of communication:</i>	8 March 2018 (initial submission)
<i>Date of adoption of decision:</i>	27 August 2019
<i>Subject matter:</i>	Effective protection and remedy against any act of racial discrimination; obligation of the State party to act against racial discrimination;
<i>Substantive issues:</i>	Discrimination on the ground of national or ethnic origin
<i>Procedural issues:</i>	Jurisdiction of the Committee
<i>Articles of the Convention:</i>	11(2)

* The present document is being issued without formal editing.

** The following members of the Committee participated in the examination of the present interState communication: Nourredine Amir, Alexei Avtonomov, Marc Bossuyt, Jose Francisco Cali Tzay, Fatimata-Binta Victoire Dah, Bakari Sidiki Diaby, Rita Izsák-Ndiaye, Keiko Ko, Gun Kut, Yanduan Li, Pastor Elias Murillo Martinez, Verene Albertha Shepherd, María Teresa Verdugo Moreno and Yeung Kam John Yeung Sik Yuen.



1. The present document has been prepared pursuant to article 11 of the Convention on the Elimination of All Forms of Racial Discrimination.
2. Qatar (the “Applicant State”) acceded to the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter ‘the Convention’) on 22 July 1976. The United Arab Emirates (the “Respondent State”) acceded to the Convention 20 June 1974. The communication alleges a violation of articles 2, 4, 5 and 6 of the Convention, in the context of enforcement of coercive measures taken by the Respondent State in 2017.
3. This document should be read in conjunction with CERD/C/99/4.
4. On 8 March 2018, the Applicant State submitted a communication against the Respondent State to the Committee on the Elimination of Racial Discrimination (the “Committee”), pursuant to Article 11 of the Convention. This note summarizes the main arguments raised by both parties, pursuant to the decision adopted by the Committee on 14 December 2018, requesting the parties to “inform the Committee whether they wish to supply any relevant information on issues of jurisdiction of the Committee or admissibility of the communication”.
5. On 29 October 2018, the Applicant State referred again the matter to the Committee in accordance with Article 11(2) of the Convention.

I. Communication submitted on 8 March 2018 by the Applicant State

A. Facts

6. The Applicant State submits that on 5 June 2017, the Respondent State, in coordination with the Kingdom of Saudi Arabia (“KSA”), the Kingdom of Bahrain (“Bahrain”) and the Arab Republic of Egypt (“Egypt”) (the “Four States”), announced that they would impose sanctions on the Applicant State, including by blocking its borders and economic and political sanctions. As part of this campaign, the Respondent State enacted and implemented discriminatory policies directed at Qatari citizens and companies, including, by expelling all Qatari residents and visitors, without any justification under international law. Those acts resulted in many cases, in irreversible human rights abuses, particularly since June 2017.
7. The Applicant State indicates that in December 2017, the Office of United Nations High Commissioner for Human Rights (OHCHR) assessed the consequences of those coercive measures taken by the Respondent State, KSA and Bahrain and concluded that the majority of the measures were broad and non-targeted, making no distinction between the Government of the Applicant State and its population. OHCHR also concluded that measures targeting individuals based on their Qatari nationality or their links with the Applicant State can be qualified as non-disproportionate and discriminatory.¹
8. The Applicant State submits that the implementation of the Coercive Measures targeted its people and company only based on their Qatari nationality. The Applicant State submits that early 2017 reports and commentaries hostile to the Applicant State and orchestrated by the Four States began to appear in prominent media outlets.
9. On 5 June 2017, the Respondent State announced “Coercive Measures” against the Applicant State, including breaking off diplomatic relations, and gave its diplomats 48 hours to leave the UAE, preventing Qatari nationals from entering the UAE or crossing its points of entry. The Respondent State also gave Qatari residents and visitors 14 days to leave the UAE for precautionary security reasons. The Respondent State closed its airspace and seaports for all Qataris in 24 hours and banned all Qatari means of transportation, coming to or leaving, from crossing, entering or leaving its territories.
10. The Respondent State Stated that it took these decisive measures because of the Qatari authorities’ failure to abide by the Riyadh Agreement on returning GCC diplomats to Doha

¹ OHCHR Technical Mission to the State of Qatar, 17-24 November 2017, Report on the impact of the Gulf Crisis on Human Rights (December 2017), paras. 60-64 (hereinafter “OHCHR Report”).

and its Complementary Arrangement in 2014 and the Applicant State's continued support, funding and hosting of terror groups.

11. On 23 June 2017, the Respondent State and the other States (through Kuwaiti mediators) issued a 13-point list of demands to the Applicant State to request the ending of the Coercive Measures. Their demands were not related to security issues but demanded that the Applicant State muzzle news outlets through which opinions sometimes critical of the Respondent State were expressed. It also requested to surrender diplomatic and strategic relationships by which the Applicant State maintained its sovereignty, accede to the interference of the Respondent State in the internal affairs of the Applicant State and pay undetermined reparations for unidentified harms. The Applicant State refused to comply with the ultimatum,² but it has attempted to reach a diplomatic resolution of this conflict, to no avail.

12. The closure of air, land, and sea borders and collective expulsion were implemented without warning and with calculated and brutal force. On 5 June 2017, the Respondent State withdrew its ambassador from Qatar and instructed its citizens to leave Qatar within 14 days, under the threat of civil penalties or criminal sanctions.³ The Respondent State issued these directives without concern for the fact that many families in Qatar are "mixed" and composed of both Qatari and Emirati nationals. Qatari nationals were not allowed to travel to the Respondent State with their family members, solely by virtue of their Qatari nationality.⁴ The Respondent State's citizens who remained in the Applicant State faced threat of severe civil penalties, including deprivation of their nationality, and criminal sanctions.⁵ The Respondent State closed its airspace and airports to all Qatari airlines and aircraft.⁶ The Respondent State also closed all Qatar Airways offices in the country.⁷

13. The Applicant State submits that the Respondent State, along with the KSA and Bahrain, has promulgated measures criminalizing acts that may be perceived as "sympathizing" with the Applicant State. The coercive measures have had a devastating impact on Qatari nationals and families: it has led to the disruption of family unity, interference with medical treatment since no exceptions to the Respondent State's restrictions on travel and movement have been made for persons who need to receive essential medical treatment. The Coercive Measures have also resulted into interference with education. Qatari students have been prevented from accessing to universities in the Four States.⁸ In addition to the above violations of basic human rights, the Four States also freeze assets of nationals and limit financial transfers of citizens or residents of the Applicant State.⁹

² See Sheikh Tamim: Any talks must respect Qatar sovereignty, Al Jazeera (22 July 2017), <http://www.aljazeera.com/news/2017/07/sheikh-tamim-talks-respect-qatar-sovereignty-170721184815998.html>.

³ *Id.* at para. 34.

⁴ The Saudi Press Agency subsequently stated that the governments of KSA and UAE issued instructions to "take into consideration the humanitarian situations" of Saudi-Qatari and Emirati-Qatari joint families in enforcing the Coercive Measures. King Orders to Take into Consideration Humanitarian Situations of Saudi-Qatari Joint Families, Saudi Press Agency (11 June 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1638960>; UAE President issues directives to address humanitarian cases of Emirati-Qatari joint families, Saudi Press Agency (11 June 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1638974>.

⁵ OHCHR Report, para. 34.

⁶ <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1639637>.

⁷ General Civil Aviation Authority closes down Qatar Airways offices in UAE, Emirates News Agency (7 June 2017), <http://wam.ae/en/details/1395302617967>.

⁸ See generally Educational Institutions in the Countries of the Blockade are Improper Educational Destination, National Human Rights Committee; Qatar: Isolation Causing Rights Abuses, Human Rights Watch (12 July 2017), <https://www.hrw.org/news/2017/07/13/qatar-isolation-causing-rights-abuses>; OHCHR Report, paras. 50-53.

⁹ See NHRC Fourth Report, at 12 and 13.

B. Alleged violations of the Convention by the Respondent State

14. The Applicant State submits that the Respondent State has violated its obligations under articles 2, 4, 5, and 6 of Convention. It claims that the Respondent State failed to enact measures to prevent, prohibit, and criminalize racial discrimination and that it has actively promoted and engaged in racial discrimination and criminalized actions intended to benefit Qataris.

15. The Applicant State claims that by imposing the Coercive Measures, the Respondent State has unlawfully targeted Qatari citizens solely based on their nationality without any legitimate justification, individualized hearing or consideration. The Applicant State also claims that, while article 1(2) allows States Parties some discretion in applying distinctions between citizens and non-citizens, this article does not permit States Parties to distinguish between different groups of non-citizens.¹⁰ It further submits that the defendant State breaches article 2(1) of the Convention by enacting broad-based measures targeting all Qatari nationals and encouraging its citizens and institutions to do the same.

16. The Applicant State submits that collective expulsions based on nationality or ethnicity violate rights to non-discrimination under the Convention and international law and that the fight against terrorism cannot justify discrimination based on the grounds of race, colour, descent, or national or ethnic origin.¹¹ The Applicant State submits that several international treaties and bodies, including the ICJ,¹² the Arab Charter on Human Rights,¹³ the European Court of Human Rights (“ECtHR”),¹⁴ the Inter-American Court of Human Rights (“IACtHR”)¹⁵ recognize that massive expulsions based on ethnicity or nationality constitute a violation of human rights.

17. The Applicant State submits that prohibiting Qatari nationals from entering into or passing through its territory, and recalling its citizens¹⁶ without any individual consideration, clearly violate the ICERD’s prohibition on discrimination based on national origin, including discrimination against non-citizens encompassed in General Recommendation N°. 30.

18. The Applicant State argues that the Respondent State violates articles 2 and 5 of the Convention by failing not only to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law.

19. The Applicant State argues that the responding State, by enacting and enforcing the Coercive Measures, violates a number of the human rights recognized under international law and enumerated in article 5 of the ICERD, and has interfered with the rights of Qatari nationals.

¹⁰ See generally CERD Committee, General Recommendation N°. 30 (2004).

¹¹ Report of the CERD on its Seventy-second and Seventy-third Sessions, U.N. Doc. A/63/18 (2008), para. 110.

¹² The ICJ later issued a judgment finding that certain procedural preconditions outlined in Article 22 of the CERD had not been met, meaning that the Court did not have jurisdiction to proceed to the merits of the dispute. It noted, however, that, while the Order for provisional measures was no longer operative, “the Parties are under a duty to comply with their obligations under [I]CERD, of which they were reminded in that Order.” Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russia Federation), Preliminary Objections Judgment (1 Apr. 2011), para. 186.

¹³ League of Arab States, Arab Charter on Human Rights, 22 May 2004, entered into force 15 March 2008, art. 26(2).

¹⁴ *Id.*; see also *Conka v. Belgium*, App. No. 51564/99 (5 February 2002); *Georgia v. Russia*, App. No. 13255/07 (3 July 2014); *Shiashvili and Others v. Russia*, App. No. 19356/07 (20 Dec. 2016); *Berdzenishvili and Others v. Russia*, App. Nos. 14594/07, 14597/07, 14976/07, 14978/07, 15221/07, 16369/07 and 16706/07 (20 December 2016).

¹⁵ See, e.g., *Case of Expelled Dominicans and Haitians v. Dominican Republic*, Judgment of 28 Augustus 2014.

¹⁶ United Arab Emirates severs relations with the Applicant State, Saudi Press Agency (5 June 2017), <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1637351>.

20. Recalling the Respondent State's citizens from the Applicant State, and prohibiting Emiratis from traveling to the Applicant State, the Respondent State has unlawfully interfered with their rights to marriage and family life in breach of articles 5(d)(iv).

21. The Applicant State further submits that the Respondent State has triggered a manipulation of the press and falsification of Statements and ideas against Qatari media outlets and blocked the transmission of Al Jazeera and other Qatari stations and websites. It considers that this amounts to an interference with the right to freedom of expression, and transgress the principles of inclusion and respect for diversity that underlie the Convention.

22. The Applicant State submits that the Coercive Measures have led to the violation of the right to public health and medical care for Qataris, who have been expelled and prohibited from travelling between the two territories or from continuing their treatment in the four States.¹⁷ The Coercive Measures imposed by the Respondent State have also unduly interfered with the right to education¹⁸ as many university students were forced to interrupt their programs of study in the Respondent State and return home to the Applicant State.¹⁹

23. The Applicant State submits that the responding State violates article 5(e)(i) of the Convention in relation to the enjoyment of the "rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration".²⁰ The Coercive Measures, and in particular the forced expulsion of Qatari citizens from the Respondent State and the restrictions on future travel, have forced many people to abandon their jobs for fear of severe punishment if they did not comply.²¹

24. In violation of article 5(d)(v) of the Convention, the Respondent State, through the Coercive Measures, have severely disrupted property rights of Qatari citizens, who have been denied the ability to access enjoy, utilize, or manage their property in violation of the Convention.

25. The Applicant State also claims that the Respondent State denies to its citizens the right to equal treatment before tribunals in violation of article 5(a) of the Convention. Qatari nationals have been effectively unable to enter the UAE, hire an attorney, or otherwise exercise their rights, challenge discrimination, or have their voices heard. The Applicant State submits that the Respondent State departs from its obligation under articles 4(a)(c) of the Convention to condemn racial hatred and incitement on the duty of State party to prevent "public authorities or public institutions, national or local from promoting or inciting racial discrimination".²² The Respondent State also does not comply with its obligation to punish ideas based on racial superiority or hatred, and incitement to racial discrimination.²³

26. The Applicant State submits that the Respondent State violates its obligation under article 6 of the Convention with regard to its failure to provide to everyone within its jurisdiction effective protection and remedies against any acts of racial discrimination.

27. Based on the foregoing and consistent with article 11(1) of the Convention, the Applicant State requested the Committee to transmit its communication to the Respondent State. The Applicant State requested the Respondent State to respond within the three-month

¹⁷ See NHRC Second Report, at 23; Peter Beaumont, Human cost of the Qatar crisis: 'families are being torn apart', The Guardian (14 June 2017), <https://www.theguardian.com/world/2017/jun/14/human-cost-of-the-qatar-crisis-families-are-being-torn-apart>.

¹⁸ CERD, General Recommendation N^o. 30 (2004), para. 31.

¹⁹ For example, a 23-year-old Qatari medical student was forced to leave classes in the UAE shortly after the Coercive Measures were declared, before she could take her final exams and graduate after five years of study. Molly Hennessy-Fiske, With a Blockade deadline looming, families in Qatar face a tough choice: Stay or go?, Los Angeles Times (19 June 2017), <http://www.latimes.com/world/middleeast/la-fg-qatar-blockade-20170619-story.html>.

²⁰ ICERD, Art. 5(e)(i).

²¹ NHRC Second Report, at 12. At the beginning of the crisis, the NHRC received numerous complaints from UAE nationals who were unable to work following the Coercive Measures.

²² ICERD, Art. 4(c).

²³ *Id.* Art. 4(a).

period set forth under that article, and take all necessary steps to end the Coercive Measures, which are in violation of international law and its obligations under the Convention. The Applicant State reserved its right to supplement and amend its communication in light of developments, as well as its request for relief, and its right to all other dispute resolution avenues that are open to it.

II. Submission of the Respondent State dated 7 August 2018

A. Absence of violations of the Convention

28. The Respondent State, through its response dated 7 August 2018, rebuts all the facts and alleged violations submitted by the Applicant State. Several elements of this submission relate to the merits of the communication.²⁴

29. The Respondent State denies the allegations of mass expulsion of Qatari citizens, travel ban against Qataris who wish to enter the Respondent State, as well as violations of human rights linked to discrimination (health, education, work, etc.). The Respondent State claims that it did not enforce the portion of the Coercive Measures of 5 June 2017 concerning the announcement by the Ministry of Foreign Affairs and International Cooperation (“MoFA”) calling on Qatari citizens to depart its territory. It considers that the communication does not refer to a situation in which a “State Party is not giving effect to the provisions of this Convention” and therefore does not fall within the scope of article 11 of the Convention.

B. Non-exhaustion of domestic remedies

30. The Respondent State considers that the Applicant State has not shown that the domestic remedies available to Qatari citizens have been exhausted as required by article 11(3) of the Convention. It submits that the Convention does not expressly refer to nationality as a ground of discrimination and that the Applicant State misinterpreted rights enumerated in the Convention and wrongly treats each provision (e.g. right to health, right to education, etc.) as encompassing an absolute right for an individual to enter a State for that purpose.

C. Concurrent proceedings

31. In terms of preliminary objections, the Respondent State raises the issue of concurrent proceedings. It reminds that, on 11 June 2018, the Applicant State has instituted proceedings against the Respondent State in the ICJ under article 22 of the Convention requesting for the indication of provisional measures of protection under the Convention. The ICJ issued its order in respect of the provisional measures requested by the Applicant State on 23 July 2018. The ICJ refused to grant any measures in the form sought by the Applicant State, and instead indicated limited measures in three areas (family re-unification, education and access to justice). The Respondent State also reminds that, in its order, the ICJ urged both parties not to take any steps that could aggravate the dispute. The Respondent State submits that the Applicant State must wait for the process before the ICJ to be completed prior to commencing proceedings before the Committee, as required by article 22 of the Convention.

III. Additional submissions of the Respondent State, dated 29 November 2018 and 14 January 2019

32. Throughout two additional submissions dated 29 November 2018²⁵ and 14 January 2019,²⁶ the Respondent State further develops its arguments on the issues of jurisdiction and admissibility. The second supplemental submission is pursuant to the decision dated 14

²⁴ Response of the United Arab Emirates to the communication dated 8 March 2018 submitted by Qatar to the Committee, dated 7 August 2018, paras. 1-90.

²⁵ Supplemental Response of the United Arab Emirates to the request made by the State of Qatar pursuant to Article 11 of the ICERD, dated 29 November 2018.

²⁶ Supplemental Response of the United Arab Emirates on issues of jurisdiction and admissibility, dated 14 January 2019, pursuant to the decision adopted by the CERD on 14 December 2018.

December 2018 adopted by the Committee. The two submissions reiterate the main arguments developed in the submission of 29 November 2018. Since the issue of jurisdiction of the Committee has to be settled before the Committee can examine the admissibility of the inter-State communication, only the arguments developed on that issue will be developed below.

A. Lack of jurisdiction

33. Concerning the jurisdiction, the Respondent State's arguments are based on two elements: the lack of jurisdiction of the Committee because the claim does not fall within the scope of article 11 of the Convention, and the absence of evidence of current violations.

B. Lack of jurisdiction due to the "absence of prohibited treatment based on current nationality"²⁷

34. The Respondent State argues that the ICERD does not prohibit differentiated treatment based on current nationality.²⁸

35. It claims that while the ICJ deferred the "question whether the expression 'national origin' mentioned in Article 1, paragraph 1, of the Convention, encompasses discrimination based on the 'present nationality' of the individual", holding that the Court "need not decide which of these diverging interpretations of the Convention is the correct one," no judicial authorities have pronounced their support for Qatar's inclusion of current nationality as prohibited basis for differentiated treatment under the ICERD.²⁹ The Respondent State submits that several Judges' opinions consider that the term "national origin" does not refer to nationality.³⁰

36. The communication only refers to differentiated treatment based on nationality, a matter falling wholly outside the scope of the Convention. The Respondent State argues that Article 1 of the Convention distinguishes between, on the one hand, discrimination on the grounds of national origin, which is equated to racial discrimination, and prohibited *per se*, and, on the other hand, differentiation based on nationality, which is not prohibited under the Convention. It therefore considers that the communication must be held inadmissible and the present proceeding terminated for lack of jurisdiction.

37. The Respondent State further submits that this conclusion is confirmed by the object and purpose of the Convention as set up in the Preamble of the Convention, which focusses on race, colour and ethnic origin. The Respondent State also submits that "national origin" refers to an individual's permanent association with a particular nation of people. It does not equate to nationality. Whereas a "national origin" is perpetual and links the individual to a nation of people, nationality is a legal relationship with a State, a relationship, which can come or go. The two concepts are not the same; and, while the Convention prohibits discrimination based on national origin, it does not prohibit it based on present nationality.³¹

38. The Respondent State further claims that the ordinary meaning of "national origin" is confirmed by the *travaux préparatoires* of the Convention. It considers that in view thereof,

²⁷ Supplemental Response of the United Arab Emirates to the request made by the State of Qatar pursuant to Article 11 of the ICERD, dated 29 November 2018.

²⁸ UAE's Supplemental Response of 14 January 2019, paras. 18-21.

²⁹ *Ibid.*, para. 19.

³⁰ See the positions of Judges Tomka, Gaja, Gevorgian and Crawford in Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Request for the Indication of Provisional Measures: Order, 23 July 2018, Joint Declaration of Judges Tomka, Gaja and Gevorgian, para. 4; see UAE's Supplemental Response of 14 January 2019, para. 20.

³¹ Comments of the United Arab Emirates on Qatar's response on issues of jurisdiction and admissibility (19 March 2019); paras. 67-69.

the expression “national origin” must be read in good faith in their context and in light of the object and purpose of the Convention, and that it does not encompass present “nationality”.³²

39. The Respondent State argues that subsequent practice³³ of States Parties confirms that differentiation based on nationality in the exercise of several of the rights recognized in the Convention does not constitute “racial discrimination”. The Respondent State notes that article 31(3)(b) of the VCLT, according to which “any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation” “shall be taken into account, together with the context” in the interpretation of a treaty.³⁴ The Respondent State refers to several examples of States Parties that grant access to their territories, allowing foreigners to work, or to vote, based on their nationalities, without necessarily violating the Convention, and highlights that States Parties often favour nationals of one State over nationals of another and have enacted legislation differentially. States Parties used to treat nationals of different foreign States in respect of the specific rights listed in article 5 of the Convention. This has never been considered by those States Parties - the Applicant State and the Respondent State included — as “racial discrimination” in breach of the Convention.³⁵

40. The Respondent State refutes the Applicant State’s arguments that General Recommendation N° 30 (2004) of the ICERD indicates that nationality-based discrimination falls within the ambit of the Convention.³⁶ The Respondent State submits that, in its General Recommendation N° 30, the Committee was clearly not purporting to suggest that all differential treatments based on citizenship (or immigration status) are impermissible under the Convention. The Committee’s aim was to make clear that differential treatment on the basis of citizenship or immigration status has to be assessed “in light of the objectives and purpose of the Convention”.³⁷

C. Lack of jurisdiction due to absence of current violations

41. The Respondent State argues that the Committee lacks jurisdiction over the communication because there is no evidence of any ongoing violation. The Committee and any *ad hoc* conciliation commission that may be appointed only has jurisdiction to consider allegations of ongoing violations of the Convention. The process established under articles 11 to 13 of the Convention is a process of conciliation, where a State Party “is not giving effect to the provisions of the Convention”. The use of the present tense in the relevant text of the CERD is deliberate and determinative. The Respondent State further argues that the good offices procedure established under articles 11 to 13 presupposes that the situation to be reviewed is still in effect. There is no possible conceptual role for retrospective dispute resolution.

42. The Respondent State argues that the Applicant State has not provided any proof to contest the evidence which the Respondent State has submitted to this Committee demonstrating that the treatment afforded to Qatari nationals in the Respondent State at present complies with the Convention. The Applicant State failed to demonstrate that any of the allegations submitted by the Respondent State constitute mistreatment or discrimination.³⁸

³² For more elements on the arguments raised by the UAE on the *travaux préparatoires*, see *ibid.*, paras. 70-88.

³³ This argument is raised for the first time by the UAE on its comments of 19 March 2019, See paras 89-93.

³⁴ See article 31(3)(b) of the Vienna Convention on the Law of Treaties, concluded on 23 May 1969, entered into force 27 January 1980, 1155 UNITED NATIONS TREATY SERIES 331 (1980).

³⁵ Comments of the United Arab Emirates on Qatar’s response on issues of jurisdiction and admissibility (19 March 2019), paras. 89-93.

³⁶ See the submissions of Qatar on 14 February 2019, paras. 29-33.

³⁷ Comments of the United Arab Emirates on Qatar’s response on issues of jurisdiction and admissibility (19 March 2019), paras. 94-98.

³⁸ Supplemental Response of the United Arab Emirates on issues of jurisdiction and admissibility, dated 14 January 2019, pursuant to the decision adopted by the CERD on 14 December 2018, para. 23.

43. The Respondent State further argues that, even in the hypothetical scenario that a State Party would have failed to give effect to the provisions of the Convention at the time of a first referral to the Committee, the Committee would be prevented from continuing to examine the communication, entertain or progress to an *ad hoc* conciliation commission once the failure to give effect to Convention's provisions has been rectified.

IV. Comments of the Applicant State, dated 14 February 2019

A. Jurisdiction of the Committee

44. The Applicant State claims that the Committee has jurisdiction over the communication because the Respondent State is not giving effect to the provisions of the ICERD.

B. Position of the Applicant State on the Committee's role and the requirements of article 11

45. The Applicant State rejects the arguments raised by the Respondent State stating that the communication is not based on actual violations of the Convention and that, therefore, the Committee should dismiss it. The Applicant State submits that it is not asking the Committee to address past transgressions. The Applicant State submits that the communication seeks to address violations that are continuing to this day.

46. The Applicant State considers that the Respondent State misinterprets the use of the present tense contained in article 11 of the Convention.³⁹ The Applicant State "considers" that the Respondent State is "not giving effect to the provisions of the Convention" by continuing to enforce the Coercive Measures, and, therefore, has properly brought this matter to the Committee under Article 11 of the Convention. The Applicant State does not consider that the matter has been adjusted to its satisfaction and accordingly referred the matter back to the Committee via its letter of 29 October 2018. The Applicant State submits that, in line with articles 11-13, the role of the Committee is to determine whether the Respondent State is giving effect to its obligations under the ICERD. It considers that the Respondent State has not rectified the situation at stake.

C. The communication is appropriately before the Committee

47. The Applicant State argues that the Respondent State's argument that the Committee lacks jurisdiction, because there is insufficient evidence of ongoing violations of the ICERD, is legally and factually wrong. As a legal matter, the question of whether a party has put forth sufficient evidence to demonstrate that another party is in violation of the ICERD should be considered by the *ad hoc* Conciliation Commission when assessing the merits of the dispute and preparing its "findings on all questions of fact relevant to the issue between the parties", in accordance with article 13. The State party therefore considers that the underlying merits should not be addressed by the Committee as a matter of jurisdiction or admissibility.⁴⁰ The Applicant State also considers that the Respondent State wrongly questions the availability of sufficient evidence as a factual matter. While citing the dissenting opinions of the ICJ judges on the matter, the Respondent State omits the position of the majority of the ICJ judges, who ruled in favour of the Applicant State in those proceedings, and indicated provisional measures to protect the rights of Qataris because the Respondent State's Coercive Measures endangered the rights of Qataris under the ICERD.⁴¹

³⁹ See submissions of Qatar of 14 February 2019, para 68.

⁴⁰ *Ibid.*

⁴¹ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures Order, p. 20, para. 54. In the context of individual complaints brought pursuant to Article 14 of the ICERD, the Committee has found that a complaint is admissible so long as the violations alleged may fall within the scope of the Convention. See, e.g., Stephen Hagan v. Australia, Communication No. 26/2002, U.N. Doc. CERD/C/62/D/26/2002 (2003), p. 10, para 6.2.

48. The Applicant State submits that there are several reports detailing the detrimental human rights impact of the Coercive Measures produced by OHCHR, Amnesty International, Human Rights Watch, and Qatari organizations like Qatar's National Human Rights Committee.⁴² The ICJ specifically observed that the consequences of the Coercive Measures persist to this date,⁴³ in particular on students, who have been deprived of the opportunity to complete their education, and of their right to equal access to tribunals and other judicial organs in the Respondent State. The Applicant State claims that the Respondent State's violations as referred to the Committee are clearly ongoing, and the effects of those measures are still being deeply felt by Qataris.

V. Further submission of the Respondent State dated 19 March 2019 (jurisdiction of the Committee and non-admissibility of the communication)

49. In its submissions dated 19 March 2019, the Respondent State reiterates the arguments presented in its supplemental submissions dated 29 November 2018⁴⁴ and 14 January 2019⁴⁵ on the lack of jurisdiction due to the "absence of prohibited treatment based on current nationality" and absence of current violations.

50. The Respondent State further argues that the argument submitted by the Applicant State, according to which the coercive measures would fall within the scope of the Convention irrespective of whether "national origin" in article 1(1) encompassed current nationality, failed. The Respondent State argues that the Applicant State's arguments maintaining that the coercive measures have an impact on people identified as Qataris, based on their historical-cultural community characteristics, is untenable. Given the geographical proximity, the common cultural and social background, common language and the close ties and interconnectedness of the populations of Qatar and the UAE,⁴⁶ render any allegations that they belong to two different "races" unsustainable. The fact that a measure has an "effect" on persons of one or more national or ethnic origin is insufficient to bring the measure within the scope of the ICERD if there is no discrimination "based on" national or ethnic origin.

51. The Respondent State considers that the inter-state communication should be declared inadmissible because a) none of the grounds relied upon by the Applicant State bar the application of the rule of exhaustion of domestic remedies to the Applicant State's claims, b) the Hotline is a readily available remedy, and c) other available and effective remedies in the Respondent State have not been exhausted. The Respondent State also argues that the concurrent proceedings before the Committee and the International Court of Justice render the communication inadmissible.

VI. Decision of the Committee on its jurisdiction in respect of the inter-State communication

52. Before considering the appointment of an *ad hoc* Conciliation Commission pursuant to article 12(1) of the Convention, the Committee must first be satisfied that it has jurisdiction

⁴² See submissions of Qatar of 14 February 2019, para 71.

⁴³ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures Order, p. 24, para. 68 (emphasis added).

⁴⁴ Supplemental Response of the United Arab Emirates to the request made by the State of Qatar pursuant to Article 11 of the ICERD, dated 29 November 2018.

⁴⁵ Supplemental Response of the United Arab Emirates on issues of jurisdiction and admissibility, dated 14 January 2019, pursuant to the decision adopted by the CERD on 14 December 2018.

⁴⁶ See Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Request for the Indication of Provisional Measures: Verbatim Record of Public Sitting of 27 June 2018, at 10:00 a.m. (CR 2018/12), p. 15, para. 2 (Al-Khulaifi).

to deal with the inter-state communication submitted on 8 March 2018 by Qatar against the United Arab Emirates and whether the inter-state communication is admissible.

53. On 3 May 2019, the Committee, pursuant to its decision dated 14 December 2018, conducted hearings on the issues of jurisdiction and admissibility, with the participation of one representative from both parties, as per article 11(4) and (5) of the Convention and the Rules of procedure adopted by the Committee on 29 April 2019.⁴⁷

A. The jurisdiction of the Committee

54. At the outset, the Committee notes that Qatar is a State party to the Convention since 20 July 1976 and the United Arab Emirates is a State party to the Convention since 20 June 1974.

55. In its supplemental responses of 29 November 2018 and 14 January 2019, the Respondent State raises the issue of lack of jurisdiction of the Committee on the grounds that a) the Convention does not prohibit “differentiated treatment based on current nationality” and b) the allegations of Qatar do not concern an “ongoing and current conduct”.

B. The issue of nationality

56. The first ground invoked for lack of jurisdiction (the issue of nationality) raises a question of interpretation of the basic concept of racial discrimination as prohibited by the Convention. In its supplemental response of 29 November 2018, that issue has been raised by the Respondent State as an exception to the jurisdiction of the Committee. In its response of 14 February 2019, the Applicant State interpreted that argument as an exception to the competence *ratione materiae* of the Committee. In its comments of 19 March 2019, the Respondent State also states that “Qatar’s article 11 communication falls outside the *scope ratione materiae* of the [I]CERD”.

57. The Committee agrees with both States parties that this question raises the preliminary issue of its competence *ratione materiae*. It does not affect the jurisdiction of the Committee and has to be examined when dealing with the question of the admissibility of the communication.

C. Current and ongoing conduct

58. In its supplemental responses of 29 November 2018 and 14 January 2019, the Respondent State invokes a second ground for lack of jurisdiction by arguing that CERD’s “jurisdiction extends only to current and ongoing violations of [I]CERD, not allegations of past conduct”. The views of the Respondent State on this issue are contested by Qatar in its response of 14 February 2019, which States that the alleged violations are “continuing to this date” and are “clearly ongoing”.

59. The Committee considers that the issue at stake relates to the essential facts referred to in the communication and presupposes a finding that the allegations raised by the Applicant State do not reflect the present reality. This issue cannot be dealt with separately from the merits of the communication. This results also from the wording of article 13 of the Convention, which states explicitly that the report of the *ad hoc* Conciliation Commission shall embody “its findings on all questions of fact relevant to the issue between the parties”. The exception has to be examined together with the merits of the communication.

D. Conclusion

60. In the absence of any other exception of jurisdiction raised by the Respondent party, the Committee decides that it has jurisdiction to examine the exceptions of inadmissibility raised by the Respondent State.

⁴⁷ In order to address the issues of jurisdiction and admissibility, the Committee adopted on 29 April 2019 “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”.

