



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Decision on the admissibility of the inter-State communication submitted by Qatar against the United Arab Emirates*, **

<i>Applicant State:</i>	Qatar
<i>Respondent State:</i>	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 a State party to act against racial discrimination
<i>Procedural issue:</i>	Admissibility of the communication
<i>Substantive issue:</i>	Discrimination on the ground of national or ethnic origin
<i>Articles of the Convention:</i>	2, 4, 5, 6 and 11 (3)

1. The present document has been prepared pursuant to article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination.
2. Qatar (the applicant State) acceded to the Convention on 22 July 1976. The United Arab Emirates (the respondent State) acceded to the Convention on 20 June 1974. The applicant State 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. The present document should be read in conjunction with CERD/C/99/3.
4. On 8 March 2018, the applicant State submitted a communication against the respondent State to the Committee on the Elimination of Racial Discrimination, pursuant to article 11 of the Convention. The present document contains a summary of the main arguments regarding admissibility raised by both parties pursuant to the Committee's decision of 14 December 2018, in which the Committee requested the parties to inform it whether they wished to supply any relevant information on the issues of the jurisdiction of the Committee or the admissibility of the communication.
5. On 29 October 2018, the applicant State referred the matter again to the Committee in accordance with article 11 (2) of the Convention.

* Adopted by the Committee at its ninety-ninth session (5–29 August 2019).

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



I. Submissions of the respondent State with regard to the admissibility of the complaint

6. The respondent State, through its responses dated 29 November 2018 and 14 January 2019, submitted that the applicant State's complaint was inadmissible on the following grounds.

A. Failure to establish that domestic remedies had been invoked or exhausted

7. The requirement of exhaustion of domestic remedies seeks to ensure that, before a claim is brought on the international plane, "the State where the violation occurred should have an opportunity to redress it by its own means, within the framework of its own domestic legal system".¹ This principle requires that each injured person first seek relief from the legal remedies of judicial or administrative courts or bodies, including administrative remedies.²

8. The respondent State submits that domestic remedies capable of providing effective relief are available to Qatari nationals with respect to each violation of rights alleged by the applicant State. It falls to the applicant State to show either that these available remedies were in fact exhausted, or that such remedies would not have been effective in the particular circumstances of the case or that their application would be "unduly prolonged". The applicant State has not argued or established that nationals of Qatar are exempted from exhausting local remedies in the respondent State on the grounds that one of the exceptions to this rule applies. Exceptions to the obligation to exhaust local remedies have only been applied in exceptional cases by the Committee. The documents submitted by the respondent State show that United Arab Emirates courts promptly review and decide cases submitted to them, including by nationals of Qatar.

9. The applicant State has put forward no evidence that constitutionally protected judicial remedies are in fact either unavailable to Qataris, or ineffective. On the contrary, court remedies are available and effective and can be pursued without difficulty, either in person or through powers of attorney. The applicant State has put forward no evidence of any national of Qatar bringing a claim before United Arab Emirates courts against the Government of the United Arab Emirates in respect of the measures at issue. Courts of the United Arab Emirates are authorized to rule on the rights and freedoms of foreigners that are contained in international conventions to which the United Arab Emirates is a party, such as the Convention, which is confirmed by various provisions of the Constitution of the United Arab Emirates. Since 5 June 2017, nationals of Qatar have freely continued to resort to United Arab Emirates courts to assert their rights in legal matters, even those not necessarily related to the Convention. Further evidence has also been submitted to the Committee showing that almost 150 powers of attorney have been executed by nationals of Qatar since 5 June 2017.

10. In addition, numerous administrative remedies are available to Qataris in the form of complaint procedures specific to various governmental authorities. Such administrative remedies are also effective and the applicant State has offered no proof to the contrary. These remedies are easily accessible and complaints are quickly resolved. Specifically, the applicant State has failed to show any instance of individuals seeking relief from the administrative complaints mechanisms set up by local governments in the United Arab

¹ *Interhandel (Switzerland v. United States of America)*, I.C.J. Reports 1959, p. 27; see also *Ambatielos (Greece v. United Kingdom of Great Britain and Northern Ireland)* (1956), *Reports of International Arbitral Awards*, vol. XII, p. 120: "It is the whole system of legal protection, as provided by municipal law, which must have been put to the test before a State, as the protector of its nationals, can prosecute the claim on the international plane."

² *Yearbook of the International Law Commission, 2006*, vol. II, Part Two (United Nations publication, Sales No.: 12.V.13 (Part 2)), draft articles on diplomatic protection, draft article 14 (2) and para. 5 of the commentary to draft article 14, pp. 44–46. See also *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2007, p. 601, para. 47 (the remedies that must be exhausted "include all remedies of a legal nature, judicial redress as well as redress before administrative bodies").

Emirates. For example, the Legal Affairs Department of the government of Dubai is tasked with receiving complaints and claims made against the government of Dubai.³ Qataris can file complaints against a Dubai government entity through the Legal Affairs Department website.⁴ If the dispute cannot be amicably settled within two months, the complainant can file claims directly against the government entity before the United Arab Emirates courts.⁵

11. The applicant State also has not shown any instance of any national of Qatar having recourse to local remedies addressing hate speech. Federal Decree Law No. 2 of 2015 of the United Arab Emirates prohibits discrimination of any kind by various means of expression.⁶ Hate speech is punishable by monetary fines and even imprisonment. Various means exist for individuals (including Qataris) to bring complaints to the attention of the authorities, including under the mechanisms provided for pursuant to Federal Decree Law No. 2 of 2015 and Federal Decree Law No. 5 of 2012. To facilitate complaints, the Dubai police offer an e-service through which an individual can report offenders.⁷

12. The applicant State also has not shown any instance of nationals of Qatar, in pursuit of their freedom of expression, making complaints to relevant authorities that deal with the alleged blocking of media content. Blocking of online content may be challenged by individual users by submitting an online form,⁸ or by the media outlets themselves by petitioning the National Media Council of the United Arab Emirates.⁹ If challenging via the latter process is unsuccessful, subsequent appeals to the United Arab Emirates courts for judicial review of National Media Council decisions are available.¹⁰

13. The applicant State has also put forward no evidence that any Qatari has made use of the complaint resolution procedures with respect to alleged violation of their right to health and right to medical treatment. The Ministry of Health and Prevention, of the United Arab Emirates, provides a number of avenues for an individual to file a complaint.¹¹ Complaints are normally resolved by the Ministry within days. If challenging via this process is unsuccessful, subsequent appeals to the United Arab Emirates courts for judicial review of the Ministry's decision are available. Alongside the federal Government's complaint procedure, the Dubai Health Authority for example has local complaint procedures available for individuals.¹²

14. The applicant State has also not shown any instance of nationals of Qatar making complaints with respect to the right to education. For example, the Department of Education and Knowledge in Abu Dhabi provides a complaint mechanism for secondary school students whereby an individual can raise a complaint against a United Arab Emirates school, including for failure to respond to a request for the provision of transcripts.

³ See Law No. 32 of 2008 and Law No. 3 of 1996, of the government of Dubai. See also the "Complaints against government entities" web page of the government of Dubai, available at <https://legal.dubai.gov.ae/en/Services/Pages/Services-Desc.aspx?ServiceID=10>.

⁴ See the "Complaint filed against a government entity" web page of the government of Dubai, available at <https://cms.legal.dubai.gov.ae/en/Website/Pages/ComplaintAgainstGovernmentEntity.aspx>.

⁵ See the "Complaints against government entities" web page of the government of Dubai, available at <https://legal.dubai.gov.ae/en/Services/Pages/Services-Desc.aspx?ServiceID=10>.

⁶ Federal Decree Law No. 2 of 2015, art. 6, available at http://ejustice.gov.ae/downloads/latest_laws2015/FDL_2_2015_discrimination_hate_en.pdf.

⁷ See the "Request to open a criminal case" web page of the Dubai police, available at <https://www.dubaipolice.gov.ae/wps/portal/home/services/individualservices/opencriminalcase?firstView=true>; see also the eCrime web page available at <https://www.dubaipolice.gov.ae/wps/portal/home/services/individualservices/content/cybercrime>.

⁸ See the web content block/unblock request form available at <https://etisalat.ae/en/generic/contactus-forms/web-block-unblock.jsp>.

⁹ See the Chairman of the Board's resolution No. 30 of 2017 on media activities licensing, arts. 67–68, available at <http://nmc.gov.ae/en-us/NMC/Documents/Media%20Activities%20Licensing%20Resolution.pdf>.

¹⁰ The reliance by the United Arab Emirates on the existence of these remedies is without prejudice to its position that broadcasters do not benefit from the protection of the Convention, which only applies to individuals and not to corporations.

¹¹ See the "Customer complaints" web page of the Ministry of Health and Prevention, available at www.mohap.gov.ae/en/Pages/COMPLAINS.aspx.

¹² See <https://mc.dha.gov.ae>.

15. Furthermore, the applicant State has not shown any instance of nationals of Qatar making complaints with respect to the right to work, despite the availability of ample remedies. In accordance with the law of the United Arab Emirates, a complaint system is available through that country's Ministry of Human Resources and Emiratization.¹³ An individual can file a complaint in person or by using the online service.¹⁴ If a settlement is not reached within two weeks, the complaint is referred to the Labour Court.¹⁵ The ruling of the Labour Court can, subject to certain limitations on small claims, be appealed to the Court of Appeals and further to the Court of Cassation.¹⁶

16. Finally, the applicant State has put forward no evidence that any Qatari has availed himself or herself of the available complaint resolution procedures relating to alleged infringement of the right to property or had recourse to the United Arab Emirates courts on such matters. With respect to complaints relating to real property, an individual can file a complaint by various means. For example, disputes between landlords and tenants may be addressed by the Rental Disputes Center of the government of Dubai, with the option of appeal to the Center's Appellate Division.¹⁷ Regarding complaints relating to an individual's assets or accounts, the Central Bank of the United Arab Emirates is equipped to handle these by fax, online, or in person at various Central Bank locations.¹⁸ The judiciary of the United Arab Emirates is naturally also available to all Qataris with grievances related to property matters. Both the complaint procedures and the United Arab Emirates courts are able to provide redress to individuals who successfully prove that their right to property has been unlawfully infringed.

17. As the complainant in this proceeding, the applicant State bears the burden of proof to establish that domestic remedies have been invoked and exhausted or to establish that exceptional circumstances relieve it of that obligation.¹⁹ Faced with the evidence demonstrating the accessibility of the United Arab Emirates legal system to nationals of Qatar, the burden of proof on Qatar to establish that its nationals who it alleges have been aggrieved by conduct of the United Arab Emirates in violation of the Convention have in fact sought to invoke and have thereafter exhausted domestic remedies to seek redress for their grievances, is substantially heightened.

B. Parallel proceedings

18. The respondent State submits that, unlike other treaties, the Convention's dispute resolution provisions do not provide that a State party may seize the International Court of Justice of the dispute or seek provisional measures from the International Court of Justice while the other methods of dispute settlement under the Convention are being pursued.²⁰

¹³ As mandated in Federal Decree Law No. 8 of 1980 (the Labour Law), art. 6, available at www.ilo.org/dyn/natlex/docs/ELECTRONIC/11956/69376/F417089305/ARE11956.pdf. See <https://www.mohre.gov.ae/en/tawteen-gate/complaint-system.aspx>.

¹⁴ See the "Register labour complaints" web page of the Ministry of Human Resources and Emiratization, available at www.mohre.gov.ae/en/our-services/register-labor-complaints.aspx.

¹⁵ Federal Decree Law No. 8 of 1980, art. 6; and see "The system of courts" on the United Arab Emirates official government portal, at www.government.ae/en/about-the-uae/the-uae-government/the-federal-judiciary/the-system-of-courts.

¹⁶ United Arab Emirates official government portal, "The system of courts".

¹⁷ See the website of the government of Dubai's Rental Disputes Center at www.rdc.gov.ae/Services_Pages/Services.aspx. See also Decree No. 26 of 2013 concerning the Rent Disputes Settlement Centre in the Emirate of Dubai, arts. 13–14, in *Dubai Real Estate Legislation*, available at www.dubailand.gov.ae/Style%20Library/download/EN-Legislation.pdf.

¹⁸ See the "Consumer complaints" web page of the Central Bank of the United Arab Emirates, available at <https://centralbank.ae/en/form/complaints>.

¹⁹ See, for example, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2007, p. 599, paras. 42–44.

²⁰ Regarding other permanent international tribunals, see, for example, the United Nations Convention on the Law of the Sea, of 10 December 1982, art. 290, which provides that in certain situations, "pending the constitution of an arbitral tribunal to which a dispute is being submitted ... the International Tribunal for the Law of the Sea ... may prescribe, modify or revoke provisional measures in accordance with this article if it considers that prima facie the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires". See also the

The Court has confirmed the linear nature of dispute resolution under the Convention by holding that the lack of settlement by negotiations or by the procedures expressly set out in the Convention are “procedural preconditions to be met before the seisin of the Court”.²¹

19. The respondent State argues that through its actions, the applicant State has created a *lis pendens* situation, where two parallel proceedings bearing on the exact same dispute between the same parties are progressing simultaneously. By its conduct of concurrently bringing and pursuing identical proceedings before the Committee and the International Court of Justice, the applicant State has acted against the principle of avoidance of duplicative litigation.

20. Similarly, by prosecuting these two procedures simultaneously, the applicant State violates the principle of *electa una via non datur recursus ad alteram* (“when one way has been chosen, no recourse to another is given”), sometimes known as the principle of election. By failing to respect this principle, the applicant State is abusing the Convention’s complaints mechanism process, and its rights under the Convention. The respondent State argues that this is in direct violation of the hierarchical and linear dispute resolution architecture of the Convention, and moreover may entangle the Court and the Committee in conflicting interpretations of the same provisions of the Convention in connection with the same dispute and at the same time.

21. The respondent State further suggests that if the Committee were to declare the article 11 communication submitted by Qatar admissible, the architecture of the Convention’s system for the settlement of disputes would be compromised. It would no longer be a linear and incremental dispute resolution procedure. The clear hierarchical structure set out in the Convention under which the proceedings before the Committee are preconditions, and therefore must precede those before the Court, would be replaced by a confusing uncoordinated set of possibilities for engagement of whatever procedure would seem at a given moment the most convenient.

C. Abuse of rights and process

22. The respondent State submits that it would be consistent with a good faith interpretation of the Convention in light of its object and purpose, as provided for in article 31 of the Vienna Convention on the Law of Treaties, to require of the applicant State to have proved a genuine case to answer before progressing the matter to an ad hoc Conciliation Commission. Otherwise, the Committee will expose the Convention’s procedure to the risk of abuse of process by the applicant State. In this respect, the respondent State reminds the Committee of its *compétence de la compétence* under public international law, and of its role, assigned to it under article 11 (3), to ensure that the Convention’s complaints mechanism is not burdened by claims that do not meet the fundamental criteria of admissibility.

II. Comments of the applicant State with regard to the admissibility of the communication

23. On 14 February 2019, the applicant State provided its comments on the respondent State’s submissions on admissibility.

American Convention on Human Rights, of 22 November 1969, art. 63 (2), which provides for the power of the Inter-American Court of Human Rights to indicate provisional measures and allows for this power to be exercised at the request of the Inter-American Commission on Human Rights “with respect to a case not yet submitted to the Court”.

²¹ *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*, p. 417, para. 29, confirming *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, p. 128, para. 141.

A. Failure to establish that local remedies have been invoked or exhausted

24. The applicant State submits that article 11 (3) is more than just a reflection of the requirement to exhaust local remedies. Under its express terms, in assessing the local remedies rule, the Committee must apply “generally recognized principles of international law”,²² and those principles make it clear that the rule does not apply to claims of the kind before this Committee.

25. The applicant State notes that the respondent State’s measures giving rise to the applicant State’s complaint constitute a systematic, generalized policy and practice that has caused, and continues to cause, widespread violations of the Convention. Generally recognized principles of international law do not require the exhaustion of local remedies in cases involving breaches of this nature. The applicant State is also making claims in its own right that are interdependent with the claims brought on behalf of its nationals. The applicant State’s claims are also preponderantly based on direct injury to it, not its nationals. Under general principles of international law, there is no need to exhaust domestic remedies in cases involving “mixed” claims of either kind.

26. The applicant State claims that the respondent State has failed to prove the existence of any effective and reasonably available remedies that have not been exhausted. It is stated in the International Law Commission’s draft articles on the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law that “local remedies do not need to be exhausted where there are no reasonably available local remedies to provide effective redress, or the local remedies provide no reasonable possibility of such redress”.²³ The International Court of Justice has made clear that “it is for the respondent” to prove “that there were effective remedies in its domestic legal system that were not exhausted”.²⁴ It is stated in the Committee’s rules of procedure that the respondent “is required to give details of the effective remedies available to the alleged victim in the particular circumstances of the case”.²⁵ Thus, the respondent State – not the

²² International Convention on the Elimination of All Forms of Racial Discrimination, article 11 (3). It should also be added that the “generally recognized principles of international law” are not static; on the contrary, they evolve. See M.C. Bassiouni, “A functional approach to ‘general principles of international law’”, *Michigan Journal of International Law*, vol. 11 (1990), p. 777: “It would be stifling not to inject into the sources of any legal system the capability of growth and development. Every national legal system includes such a process, either through the jurisprudence of its courts or through doctrine as developed by scholars. Thus, it can be said that legal principles evolve and that a legal mechanism or process for the recognition and application of this evolutive aspect of law must exist in international law.” Needless to say, the “generally recognized principles of international law” relevant to human rights protection are undoubtedly more progressive today than they were even at the time that the Convention was concluded. Indeed, “the Convention, as the Committee has observed on many occasions, is a living instrument that must be interpreted and applied taking into account the circumstances of contemporary society” (see Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, para. 5). See also, for example, Committee on the Elimination of Racial Discrimination, general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, para. 1 (d) (which refers to the evolution in the field of human rights since the adoption of the Convention), and the same Committee’s general recommendation No. 35 (2013) on combating racist hate speech, para. 4 (which refers to this Committee’s work “in implementing the Convention as a living instrument”).

²³ International Law Commission, *Draft Articles on Diplomatic Protection, with commentaries* (2006), art. 15 (a). As such, even if “doubts about the effectiveness” of proceedings “cannot absolve a petitioner from pursuing them”, such remedies must offer a *reasonable possibility* (emphasis added) of success. See *Mostafa v. Denmark* (CERD/C/59/D/19/2000), para. 7.4.

²⁴ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Preliminary Objections, Judgment, I.C.J. Reports 2007, p. 600, para. 44.

²⁵ See rule 92 (7). See also, for example, *Diop v. France* (CERD/C/39/D/2/1989), para. 5.2. Qatar notes that rule 92 (7) of the rules of procedure concerns the filing of individual complaints under article 14, rather than inter-State complaints under article 11, but sees no reason why the burden of proof would be allocated any differently for inter-State procedures. Indeed, the United Arab Emirates itself submits that “the Committee’s jurisprudence on exhaustion of local remedies under article 14 is also relevant for the present purposes given the similarity of the provisions on the obligation to exhaust local remedies of articles 11 (3) and 14 (7) (a) of the International Convention on the Elimination of All Forms of Racial Discrimination” (submission dated 15 January 2019, para. 49).

applicant State – bears the burden of proving that local remedies exist, and also that those remedies are both reasonably available and effective.

27. As regards the complaint procedures specific to various governmental authorities, the applicant State notes that this category of remedies was not even mentioned in the respondent State's previous submissions, except for a procedure available through the Legal Affairs Department of the government of Dubai. However, even that procedure is not a remedy encompassed by article 11 (3) of the Convention, since the Legal Affairs Department is tasked with "receiving complaints and claims made against the government of Dubai". However, the measures in question were not issued by the government of Dubai but rather by the respondent State as a whole, and the respondent State has proffered no evidence that the Legal Affairs Department of the government of Dubai is able to hear complaints made against it.

28. As for other remedies suggested by the respondent State, the applicant State notes that they could only conceivably concern narrow subsets of activity implicated by its complaint. However, it is the State alleging non-exhaustion that must provide evidence of the effectiveness of a purported remedy, including in the form of examples of the alleged remedy having been successfully utilized by persons in similar positions.²⁶

B. Parallel proceedings

29. The applicant State argues that it is entirely permissible to have concurrent proceedings before this Committee and the International Court of Justice. It rejects the argument by the United Arab Emirates that article 22 establishes a hierarchical and linear process, and that *lis pendens* and *electa una via non datur recursus ad alteram* apply in the present case. It submits that concurrent proceedings would ensure the equality of the parties and uphold the integrity of the system.

30. The applicant State further submits that the two requirements of negotiation and the Convention's procedures are alternative, not cumulative. As a result, a State party may refer a dispute to the International Court of Justice without any recourse to the Committee. It provides the following grounds for its reasoning:

(a) As explained by five International Court of Justice judges in a joint dissenting opinion in *Georgia v. Russian Federation*,²⁷ negotiation and the Convention's procedures are two different ways of doing the same thing, that is to say, seeking an agreement premised on the parties' ability to reconcile their positions.

(b) If the requirements were deemed cumulative, the negotiation requirement would be rendered redundant and deprived of any *effet utile*. In particular, article 11 (2) provides that, after the initial communication and response have been exchanged, "if the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them ... either State shall have the right to refer the matter again to the Committee". If the two requirements were cumulative, there would be no

²⁶ Cesare P.R. Romano, "The rule of prior exhaustion of domestic remedies: theory and practice in international human rights procedures", *International Courts and the Development of International Law* (2013), p. 568: "The European Court of Human Rights has specified that the State must not only satisfy the Court that the remedy was effective, available both in theory and practice at the relevant time, but also frequently asks the State to provide examples of the alleged remedy having been successfully utilized by persons in similar positions to that of the applicant." See also CERD/C/ARE/CO/18-21, para. 13, in which the Committee stated that "a low number of complaints does not signify the absence of racial discrimination in the State party, but may signify barriers in invoking the rights in the Convention domestically"; and the Committee's general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, para. 1 (b).

²⁷ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Joint Dissenting Opinion of President Owada, Judges Simma, Abraham and Donoghue and Judge ad hoc Gaja, I.C.J. Reports 2011, para. 44. Note that the judges dissented on a separate issue; this issue of cumulative versus alternative was not decided by the majority: see the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011, p. 140, para. 183.

reason to have an additional negotiation requirement in article 22 on top of the negotiation requirement already stated in article 11 (2).

(c) If the requirements were cumulative, it would lead to the unreasonable result that some disputes subject to article 22 could never be referred to the International Court of Justice.

(d) The fact that the two requirements are alternative is supported by the *travaux préparatoires* of the Convention. After reviewing the relevant *travaux préparatoires*, five judges of the International Court of Justice concluded: “The clear impression ... emerges that the three Powers’ intent in proposing their amendment was not to impose a further condition resulting in more limited access to the Court than under the earlier text.”²⁸

31. According to the applicant State, article 22 does not create the hierarchical and linear process that the respondent State claims, but rather offers the prospect of alternatives. Thus, the Convention’s procedures can be engaged independently of International Court of Justice proceedings. There would also be no harm to procedural rights, as both parties have to litigate two cases, but the parties have equal procedural rights before both the Committee and the International Court of Justice.

C. Abuse of rights and process

32. The applicant State notes that article 11 (1) and (2) only states that it may bring the matter to the attention of the Committee and refer the matter again to the Committee, and article 11 (4) provides that the Committee may call upon the States parties concerned to supply any other relevant information. To date, the Office of the United Nations High Commissioner for Human Rights has only invited the applicant State to provide its observations on the respondent State’s submissions with regard to jurisdiction and admissibility. The applicant State also notes that it furnished numerous third-party reports during the oral hearings before the International Court of Justice documenting the acts of discrimination committed by the respondent State. The applicant State submits that it will be willing to present more evidence – whether before the Committee, a Conciliation Commission constituted under article 12 of the Convention, or the International Court of Justice – at the appropriate stage.

33. The applicant State further notes that the International Court of Justice has already held that some of the acts of which the applicant State complains may constitute acts of racial discrimination as defined in the Convention, and has even taken the extraordinary step of indicating provisional measures preserving such rights.

III. Further submission of the respondent State with regard to the admissibility of the communication

34. The respondent State, in its note verbale dated 19 March 2019, provided its further submission on admissibility. It reiterated its position with regard to the non-exhaustion of domestic remedies and to the existence of concurrent proceedings before the Committee and the International Court of Justice, which, specifically, is that:

(a) None of the grounds relied upon by the applicant State bar the application of the rule on exhaustion of domestic remedies to its claims;

(b) There are effective and reasonably available remedies in the respondent State that have not been exhausted:

(i) The hotline is a readily available remedy for nationals of Qatar who want to travel to the respondent State, and is consistent with international practice;

²⁸ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Joint Dissenting Opinion of President Owada, Judges Simma, Abraham and Donoghue and Judge ad hoc Gaja, I.C.J. Reports 2011*, para. 47.

- (ii) Local remedies are available against the alleged actions of Emirates Airlines and Etihad Airways;
- (iii) Qatari students who have not continued their studies in the respondent State did so of their own choice and have complained to international organizations instead of addressing their complaints to the educational institutions concerned;
- (iv) Qatari property owners have also resorted to arbitration under the Agreement for Promotion, Protection and Guarantee of Investments among Member States of the Organization of the Islamic Conference (the Organization of Islamic Cooperation investment agreement).
- (c) The applicant State's resubmission of the matter to the Committee after six months is inadmissible because it ignores the reference contained in article 11 (2) to bilateral negotiations or other procedures;
- (d) The applicant State's submission is incompatible with the hierarchical and linear dispute-settlement system of the Convention;
- (e) There was no attempt by the applicant State to engage in negotiations with the respondent State;
- (f) The risk of *lis pendens* and *electa una via non datur recursus ad alteram* cannot be ignored.

35. The respondent State argues that the present case differs from *Georgia v. Russian Federation* because citizens of Qatar are able to enter and reside in the respondent State upon prior application and they enjoy the same rights within the United Arab Emirates as other foreign nationals. The respondent State submits that it did not take any steps to deport citizens of Qatar and that the Ministry of Interior, which is the United Arab Emirates government entity charged with regulating and altering the residence status of non-citizens, did not issue any orders deporting citizens of Qatar.

IV. Decision of the Committee on the admissibility of the communication

36. Besides the issue of nationality, the respondent State raises the issues of non-exhaustion of domestic remedies and of the existence of concurrent proceedings before the Committee and before the International Court of Justice as exceptions of inadmissibility of the inter-State communication.

A. Exhaustion of domestic remedies

37. Article 11 (3) of the Convention requires the Committee to ascertain that "all available domestic remedies have been invoked and exhausted in the case". In its supplemental responses of 29 November 2018 and 14 January 2019, the respondent State argues that Qatar has failed to establish that local remedies have been invoked and exhausted as required under article 11 (3). The respondent State observes that the "United Arab Emirates courts are authorized to rule on the rights and freedoms of foreigners contained in international conventions to which the United Arab Emirates is a party such as the International Convention on the Elimination of All Forms of Racial Discrimination" and that "Qatar has put forward no evidence of any Qatari national bringing a claim before the United Arab Emirates courts against the United Arab Emirates Government in respect of the measures at issue".

38. According to the applicant State's response dated 14 February 2019, the requirement of article 11 (3) does not apply to its claims, which are preponderantly based on indirect injury to itself caused by "widespread harm or generalized State policies and practices". The applicant State observes that exhaustion of those remedies has only been required "when the claims involved a discrete number of easily identifiable individuals" and not "a high number of persons". Moreover, the applicant State argues that the "United Arab Emirates has failed to prove the existence of any effective and reasonably available remedies that have not been exhausted". That the United Arab Emirates itself admits that

there are not “any examples of Qataris having successfully utilized court ‘remedies’ with respect to the measures” shows, in the opinion of the applicant State, that there are no effective and reasonably available remedies to be exhausted.

39. In its comments of 19 March 2019, the respondent State replied that there was not “a single arrest, detention or expulsion of a Qatari national”. It stated that the Ministry of Interior “did not issue any orders deporting Qatari citizens”, and that “all the United Arab Emirates required of Qatari nationals was for them to request permission to enter the United Arab Emirates, through the hotline”.

40. The Committee notes that the allegations of the applicant State refer to measures undertaken as part of a policy ordered and coordinated at the highest levels of government, which represents a generalized policy and practice. In order to substantiate their conflicting views on the requirement of the exhaustion of domestic remedies, the States parties concerned invoke a multitude of factual elements that can only be verified at the stage of examination of the merits of the communication. Moreover, the Committee considers that exhaustion of domestic remedies is not a requirement where a generalized policy and practice has been authorized.

41. For the above-mentioned reasons, the Committee decides that the exception of the non-exhaustion of domestic remedies should be examined jointly with the examination of the merits of the communication.

B. Existence of concurrent proceedings

42. On 8 March 2018, Qatar submitted its communication against the United Arab Emirates to the Committee. On 11 June 2018, Qatar instituted proceedings before the International Court of Justice under article 22 of the Convention, according to which: “Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.”

43. In its order of 23 July 2018 in the case *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*, the International Court of Justice indicated, by eight votes to seven, the following provisional measures: (a) the United Arab Emirates must ensure that (i) families are reunited; (ii) Qatari students are given the opportunity to complete their education in the United Arab Emirates or to obtain their educational records; and (iii) Qataris are allowed access to tribunals and other judicial organs of the United Arab Emirates; and (b) both parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve. On 29 October 2018, Qatar referred the communication again to the Committee, pursuant to article 11 (2) of the Convention, since the matter had not been adjusted to the satisfaction of both parties.

44. In its supplemental response of 29 November 2018, the respondent State expressed the view that recourse to the International Court of Justice was only available “at the end of a carefully crafted linear and hierarchical process”. In its opinion, allowing two parallel proceedings progressing simultaneously “would jeopardize the systemic integrity of the system and risk resulting in fragmented jurisprudence”. In its supplemental response of 14 January 2019, the respondent State observed that Qatar had created a *lis pendens* situation which violated the principle of *electa una via non datur recursus ad alteram*. According to the respondent State, to continue in parallel “would also wreak irreparable harm on the procedural rights of the United Arab Emirates, which would be required to simultaneously defend itself against the same allegation in two overlapping and parallel procedures”.

45. In its response of 14 February 2019, the applicant State relied on five arguments to come to the conclusion that the requirements enshrined in article 22 of the Convention (i.e. “by negotiation or by the procedures expressly provided for in this Convention”) were “alternative, not cumulative” and that the Convention procedures could be engaged independently of International Court of Justice proceedings. According to the applicant State, neither *lis pendens* nor *electa una via non datur recursus ad alteram* applies because

the two proceedings are different: “non-binding recommendations from a Conciliation Commission and a binding decision from the International Court of Justice”. The applicant State also denies that it would entail inequality of the parties, because “Qatar and the United Arab Emirates have equal procedural rights before both the Committee and the International Court of Justice”.

46. In its comments of 19 March 2019, the respondent State insisted on the hierarchical and linear character of the dispute-settlement system of the Convention. Moreover, according to the respondent State, “there have been no negotiations, and not even an attempt by Qatar to set these negotiations in motion”. The respondent State warns of “a real and concrete possibility of conflict of decisions and of a clash between the Committee and the principal judicial organ of the United Nations”.

47. On 22 March 2019, the respondent State requested before the International Court of Justice the indication of provisional measures in order to preserve its procedural rights and to prevent Qatar from aggravating or extending the dispute. The respondent State requested, in particular, that Qatar immediately withdraw its communication submitted to the Committee and take all measures necessary to terminate consideration thereof by the Committee. On 7–9 May 2019, hearings were held by the International Court of Justice on the request submitted by the United Arab Emirates for the indication of provisional measures.

48. In its order of 14 June 2019 in the case *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*, the International Court of Justice rejected, by 15 votes to 1, the request submitted by the United Arab Emirates on 22 March 2019 for the indication of provisional measures. As far as termination of the consideration by the Committee of the communication submitted by Qatar is concerned, the International Court of Justice, considering that that measure did not concern a plausible right under the Convention, concluded that the conditions for the indication of such a measure were not met. The International Court of Justice maintained its view that there was no need at this stage of the proceedings to make a pronouncement on the interpretation of the compromissory clause in article 22 of the Convention concerned by that requested measure.

49. The Committee considers that the word “or” between “by negotiation” and “by the procedures expressly provided for in this Convention” in article 22 of the Convention clearly indicates that the State parties may choose between the alternatives proposed by that provision. Moreover, the Committee, an expert monitoring body entitled to adopt non-binding recommendations, is not convinced that a principle of *lis pendens* or *electa una via non datur recursus ad alteram*, which should rule out proceedings concerning the same matter by a judicial body entitled to adopt a legally binding judgment, is applicable.

50. The International Court of Justice arrived at a similar conclusion when it stated in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)* that “the phrase ‘any dispute... which is not settled by negotiation or by the procedure expressly provided for in this Convention’ does not, in its plain meaning, suggest that formal negotiations in the framework of the Convention or recourse to the procedure referred to in article 22 thereof constitute preconditions to be fulfilled before the seisin of the Court”.²⁹ In his dissenting opinion in that case, Judge Cançado Trindade also noted that “article 22 is not to be read as requiring prior ‘exhaustion’ of the procedures set forth in articles 11 and 12 of the International Convention on the Elimination of All Forms of Racial Discrimination, as an alleged ‘precondition’ to the Court’s jurisdiction”.

51. As suggested in the opinion of the (only) dissenting judge (ad hoc Judge Jean-Pierre Cot, chosen by the United Arab Emirates) in the order of 14 June 2019, the International Court of Justice can, if it so wishes, suspend its proceedings until the Committee renders its final conclusion concerning the communication submitted by Qatar. In any case, the Committee fails to see how the existence of “parallel proceedings” would entail the risk of compromising the fairness of the procedure and the equality of arms between the parties,

²⁹ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008, p. 388, para. 114.*

since both parties have equal procedural rights before the two bodies. This is the more so when the term “parallel” applies essentially to the concurrent time at which two proceedings are being held when the purport and scope of the decision called for in those two proceedings are dissimilar.

52. The Committee therefore rejects the exception raised by the respondent State based on the existence of ongoing proceedings before the International Court of Justice.

C. Competence *ratione materiae* of the Committee (on the issue of nationality)

53. According to the respondent State, the Convention “contains no express reference to nationality as a ground of discrimination” and “does not prohibit differentiated treatment based on current nationality”. In both of these responses, the respondent State refers to the views expressed by Judges Tomka, Gaja and Gevorgian in their joint declaration and by Judges Crawford and Salam in their dissenting opinions attached to the above-mentioned order of 23 July 2018 of the International Court of Justice in *Qatar v. United Arab Emirates*.

54. As stated in paragraph 57 of its decision on the jurisdiction of the Committee in respect of the inter-State communication, adopted on 27 August 2019 (CERD/C/99/3), the absence of nationality in the definition of racial discrimination prohibited by the Convention does not affect the jurisdiction of the Committee. It has to be dealt with as a preliminary exception concerning the inadmissibility of the communication based on the alleged incompetence *ratione materiae* of the Committee.

55. The Committee notes that in article 1 (1) of the Convention, racial discrimination is defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin”. Nationality, as such, is not mentioned as a ground of prohibited racial discrimination. Moreover, it is stated in article 1 (2) that the Convention “shall not apply to distinctions, exclusions, restrictions or preferences made by a State party to this Convention between citizens and non-citizens”.

56. In its comments of 19 March 2019, the respondent State stresses that the *travaux préparatoires* of the Convention show that in the different stages of the elaboration of the Convention (with the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights and the Third Committee), the ground of national origin was understood as not covering nationality or citizenship.

57. However, article 1 (3) of the Convention provides that “nothing in this Convention may be interpreted as affecting in any way the legal provisions of States parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality”.

58. Moreover, in its subsequent practice, the Committee has repeatedly called upon States parties to address instances of discrimination against non-citizens on the basis of their nationality. As stated by Patrick Thornberry, a former member of the Committee, in his authoritative commentary on the Convention: “A reading of 1 (2) that rules out from the Convention any concern with non-citizens could be classified in Vienna Convention on the Law of Treaties terms as a ‘manifestly absurd or unreasonable’ reading of the Convention, and as not corresponding to its object and purpose.”³⁰

59. The Committee recalls, as stated in its general recommendation No. 30 (2004) on discrimination against non-citizens, that: “Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.”³¹

³⁰ Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016), p. 158.

³¹ See para. 4.

60. It is in line with this standard, which requires “a legitimate aim” and “proportionality” in achieving this aim, that the Committee examines whether a distinction based on citizenship constitutes discrimination prohibited by the Convention.

61. The Committee also recalls that States parties are to “ensure that non-citizens are not subject to collective expulsion, in particular in situations where there are insufficient guarantees that the personal circumstances of each of the persons concerned have been taken into account” and “avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life”.³²

62. The Committee also emphasizes that, as elucidated in its general recommendation No. 30, the Convention includes the duty to protect non-citizens against States parties’ arbitrariness. In this regard, any text concerning non-citizens or persons of a particular national or ethnic origin should not be applicable when incompatible with the provisions of the Convention.

63. It is in light of this constant practice that the Committee exercises its competence *ratione materiae* when confronted with differences of treatment based on nationality. Far from considering any difference of treatment between citizens and non-citizens as contrary to the Convention, which would be in contravention of its article 1 (2), the Committee considers itself competent to examine whether such differences pursue a legitimate aim, are proportional to the achievement of that aim and do not result in a denial of fundamental human rights of non-citizens. It is only when those requirements are fulfilled, and when a different treatment does not discriminate against any particular nationality as required under article 1 (3) of the Convention, that such differences do not constitute discrimination as prohibited by the Convention. Consequently, the allegations submitted in the *Qatar v. United Arab Emirates* inter-State communication do not fall outside the scope of competence *ratione materiae* of the Committee. The Committee therefore rejects the preliminary exception raised by the United Arab Emirates relating to the absence of the term “nationality” in the definition of racial discrimination prohibited by the Convention.

D. Conclusion

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

65. The Committee requests its Chair to appoint, in accordance with article 12 (1) of the Convention, the members of an ad hoc Conciliation Commission, which shall make its good offices available to the States concerned with a view to an amicable solution of the matter on the basis of States parties’ compliance with the Convention.

³² Ibid., paras. 26 and 28.

Annex

List of the submissions

1. Communication submitted by Qatar pursuant to article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination, dated 8 March 2018 (51 pages).
 2. Response of the United Arab Emirates to the communication dated 8 March 2018 submitted by Qatar pursuant to article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination, dated 7 August 2018 (26 pages).
 3. Supplemental response of the United Arab Emirates to the request made by Qatar pursuant to article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination, dated 29 November 2018 (40 pages).
 4. Supplemental response of the United Arab Emirates on issues of jurisdiction and admissibility, pursuant to the decision adopted by the Committee on the Elimination of Racial Discrimination during its ninety-seventh session (26 November–14 December 2018), to the request made by Qatar pursuant to article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination, dated 14 January 2019 (30 pages).
 5. Response of Qatar, dated 14 February 2019 (103 pages).
 6. Comments of the United Arab Emirates on the response of Qatar on issues of jurisdiction and admissibility, dated 19 March 2019 (85 pages).
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