International tribunals — Jurisdiction and admissibility — United Nations Committee on the Elimination of Racial Discrimination — International Convention on the Elimination of All Forms of Racial Discrimination, 1965 — Discrimination on ground of national or ethnic origin — Inter-State communication — Whether Committee lacking jurisdiction — Scope of Article 11 of Convention — Nationality issue — Whether exception to jurisdiction — Interpretation of concept of racial discrimination prohibited by Convention — Whether raising preliminary issue of competence *ratione materiae* — Issue to be examined at same time as admissibility — Whether jurisdiction extending only to current and ongoing violations of Convention — Whether communication admissible — Non-exhaustion of domestic remedies — Issue to be examined jointly with merits — Concurrent proceedings — Nationality — Appointment of ad hoc Conciliation Commission — International Convention on the Elimination of All Forms of Racial Discrimination, 1965, Articles 11(2) and 12(1)

Human rights — Rights to non-discrimination — International Convention on the Elimination of All Forms of Racial Discrimination, 1965 — International law — Whether fight against terrorism justifying discrimination — Discrimination on ground of national or ethnic origin — Applicant State enforcing coercive measures against respondent State in 2017 — Whether respondent State failing to enact measures to prohibit racial discrimination — Whether respondent State promoting racial discrimination — Whether respondent State violating international law — Whether respondent State violating Articles 2, 4, 5 and 6 of International Convention on the Elimination of All Forms of Racial Discrimination, 1965 — Whether Committee having jurisdiction — Admissibility of communication

International tribunals — United Nations Committee on the Elimination of Racial Discrimination — International Court of Justice — Concurrent proceedings — Article 22 of International Convention on the Elimination of All Forms of Racial Discrimination, 1965 — Whether principle of *lis pendens* or *electa via* applicable — Admissibility of communication

Treaties — Interpretation — International Convention on the Elimination of All Forms of Racial Discrimination, 1965 — Article 1 — Prohibition of racial discrimination — Interpretation of concept of racial discrimination — Discrimination on ground of national or

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ethnic origin — Meaning of national origin — "Nationality" excluded from definition — Distinction between citizens and non-citizens — United Nations Committee on the Elimination of Racial Discrimination — General Recommendation No 30 (2004) on discrimination against non-citizens — Differences of treatment based on nationality — Whether constituting discrimination as prohibited by Convention — Applicant State's allegations against respondent State in communication concerning violations of Convention — Whether allegations concerning ongoing and current violations of Convention — Issue relating to essential facts and to be examined at merits stage — Whether Committee having competence *ratione materiae* — Admissibility of communication

Nationality — Distinction between citizens and non-citizens — United Nations Committee on the Elimination of Racial Discrimination — International Convention on the Elimination of All Forms of Racial Discrimination, 1965 — Article 1 — Prohibition of racial discrimination — Interpretation of concept of racial discrimination — Discrimination on ground of national or ethnic origin — General Recommendation No 30 (2004) on discrimination against non-citizens — Differences of treatment based on nationality — Whether constituting discrimination as prohibited by Convention — Allegations in communication concerning racial discrimination — Whether Committee having competence *ratione materiae* — Admissibility of communication

QATAR *v.* UNITED ARAB EMIRATES[1]

United Nations Committee on the Elimination of Racial Discrimination. 27 *August* 2019

[1] The following members of the Committee participated in the examination of the present inter-State communication: Dr Nourredine Amir (Algeria), Mr Alexei Avtonomov (Russian Federation), Mr Marc Bossuyt (Belgium), Mr Jose Francisco Cali Tzay (Guatemala), Ms Fatimata-Binta Victoire Dah (Burkina Faso), Mr Bakari Sidiki Diaby (Ivory Coast), Ms Rita Izsák-Ndiaye (Hungary), Ms Keiko Ko (Japan), Mr Gun Kut (Turkey), Ms Yanduan Li (China), Mr Pastor Elias Murillo Martinez (Colombia), Prof. Verene Albertha Shepherd (Jamaica), Ms María Teresa Verdugo Moreno (Spain) and Mr Yeung Kam John Yeung Sik Yuen (Mauritius).

The 2018 and 2019 provisional measures orders and the 2021 judgment on preliminary objections of the International Court of Justice in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates)* can be found at 203 ILR 1 above.

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SUMMARY:[2] *The facts*:—On 8 March 2018, Qatar ("the applicant State") submitted a communication against the United Arab Emirates ("the respondent State") pursuant to Article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 ("the Convention").[3] The applicant State alleged that the respondent State, by enforcing coercive measures against it in 2017, had violated Articles 2, 4, 5 and 6 of the Convention.[4] It claimed that the respondent State had failed to enact measures to prevent, prohibit and criminalize racial discrimination, and had actively promoted and engaged in racial discrimination, and criminalized actions intended to benefit Qataris.

The applicant State submitted that, on 5 June 2017, the respondent State, in co-ordination with Saudi Arabia, Bahrain and Egypt, had announced the imposition of sanctions on the applicant State, which included blocking its borders, and economic and political sanctions. It alleged that the respondent State had enacted and implemented discriminatory policies directed at Qatari citizens and companies solely based on their nationality, which included the expulsion of all Qatari residents and visitors in violation of the Convention and international law. This, the applicant State claimed, could not be justified by the fight against terrorism and had resulted in many cases in irreversible human rights abuses, including violations of rights to marriage and family life, work, property, equal treatment before tribunals and effective protection and remedies against acts of racial discrimination. That mass expulsions based on ethnicity or nationality constituted a violation of human rights had been recognized by several international treaties and bodies, including the International Court of Justice ("ICJ"). The applicant State maintained that, according to the Committee's General Recommendation No 30 (2004),[5] the Convention encompassed discrimination against non-citizens.

The respondent State denied the alleged violations. It maintained that the applicant State had not demonstrated that the domestic remedies available to Qatari citizens had been exhausted in accordance with Article 11(3) of the Convention, that nationality was not expressly referred to as a ground of discrimination and that the applicant State had misinterpreted Convention rights. The respondent State also noted that the applicant State had already instituted proceedings against it, on 11 June 2018, before the ICJ under

[2] Prepared by Ms Karen Lee, Co-Editor.

[3] The Convention was adopted on 21 December 1965 by UN General Assembly resolution 2106 (XX). Qatar acceded to the Convention on 22 July 1976. The United Arab Emirates acceded to the Convention on 20 June 1974.

[4] For further details, see paras. 19-20 and 23-6 of the decision on the jurisdiction of the Committee.

[5] The Committee on the Elimination of Racial Discrimination's General Comment/Recommendation No XXX on discrimination against non-citizens (2004) is reproduced for reference as an appendix at the end of the text of the decision on admissibility of the communication (see p. 605).

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Article 22 of the Convention[6] and that the ICJ had issued its order on the request for the indication of provisional measures by the applicant State on 23 July 2018[7] refusing to grant any measures in the form sought and urging both Parties to refrain from steps that could aggravate the dispute. The respondent State submitted that Article 22 of the Convention required the ICJ process to complete before proceedings could be commenced before the Committee. In its order of 14 June 2019,[8] the ICJ had rejected the request for the indication of provisional measures by the respondent State.

On 29 October 2018, the applicant State 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.

Decision on Jurisdiction of Committee (27 August 2019)

The respondent State argued that the Committee lacked jurisdiction because the claim did not fall within the scope of Article 11 of the Convention and because of the absence of evidence of current violations. It maintained that, although the Convention prohibited discrimination on the grounds of national origin, it did not prohibit differentiated treatment based on current nationality. Whereas "national origin" referred to a permanent association with a State, "nationality" did not, and could change. This ordinary meaning of "national origin" was confirmed by the Convention's *travaux préparatoires* and did not encompass current nationality. It was also confirmed by subsequent State practice, it argued. In its General Recommendation No 30 the Committee had wanted to make clear that differential treatment based on citizenship or immigration status had to be assessed in the light of the objectives and purpose of the Convention. The communication was thus inadmissible as it referred only to differentiated treatment based on current nationality. The fact that there was no evidence of current violations also meant that the Committee lacked jurisdiction. The Committee and any ad hoc conciliation commission could only consider allegations of ongoing Convention violations. There was no role for retrospective dispute resolution

[6] Article 22 of the Convention provided that: "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."

[7] See 203 ILR 18. See also para. 43 of the decision of the admissibility of the communication for details of the provisional measures indicated by the ICJ on 23 July 2018 (by eight votes to seven) following the request by the applicant State.

[8] See 203 ILR 102. See also para. 48 of the decision of the admissibility of the communication for details of the order of the ICJ of 14 June 2019 rejecting (by fifteen votes to one) the request for the indication of provisional measures submitted by the respondent State.

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under the conciliation process established under Articles 11-13 of the Convention.

The applicant State maintained that the Committee did have jurisdiction over the communication. It asserted that the matter had been properly brought to the Committee under Article 11 of the Convention. The respondent State was not giving effect to Convention provisions, and it was the Committee's role under Articles 11-13 to determine this. The communication also sought to address violations which were continuing, and the sufficiency of evidence in this regard should be assessed by the ad hoc Conciliation Commission when assessing the merits of the dispute. The underlying merits of the dispute should not be assessed as a matter of jurisdiction or admissibility.

Held:—The Committee had jurisdiction to examine the exceptions raised by the respondent State concerning the admissibility of the communication.

(1) The Committee had to be satisfied that it had jurisdiction and that the inter-State communication was admissible before considering the appointment of an ad hoc Conciliation Commission pursuant to Article 12(1) of the Convention (para. 52).

(2) The issue of nationality did not affect the jurisdiction of the Committee. It did, however, raise a question of interpretation of the basic concept of racial discrimination as prohibited by the Convention, and the issue of the Committee's competence *ratione materiae*, which was to be examined at the same time as the admissibility of the communication (paras. 56-7).

(3) The question whether the applicant State's allegations concerned current and ongoing violations of the Convention related to the essential facts and could not be dealt with separately from the merits of the communication. The wording of Article 13 of the Convention also explicitly stated that the report of the ad hoc Conciliation Commission had to embody its findings on all questions of fact relevant to the issue between the Parties (paras. 58-9).

Decision on Admissibility of Communication (27 August 2019)

The respondent State submitted that the applicant State's complaint was inadmissible since it had failed to establish that local remedies had been invoked or exhausted, it had brought parallel proceedings before the Committee and the ICJ, and it had failed to prove that there was a genuine case to answer thus exposing the Convention's procedure to the risk of abuse of process.[9]

[9] The respondent State's further submissions can be found at paras. 34-5 of the decision on the admissibility of the communication.

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The applicant State argued that the exhaustion of local remedies rule did not apply to claims of this kind before the Committee. It maintained that it was permissible to have concurrent proceedings before the Committee and the ICJ, submitting that this ensured equality for the Parties and upheld the integrity of the system. The applicant State also submitted that it had thus far only been invited to provide its observations on the respondent's submissions to jurisdiction and admissibility; it was willing to present more evidence at the appropriate stage.

Held:—The exceptions raised by the respondent State concerning the admissibility of the communication were rejected.

(1) The non-exhaustion of domestic remedies exception had to be examined jointly with the merits. The States parties had invoked many factual elements to substantiate their views which could only be verified at the merits stage. The exhaustion of domestic remedies was not required where a generalized policy and practice had been authorized; the applicant State had referred to measures undertaken as part of a policy ordered and co-ordinated at the highest levels of government (paras. 37-41).

(2) The exception based on the existence of ongoing proceedings before the ICJ was rejected.

(a) The word "or" between "by negotiation" and "by the procedures expressly provided for in this Convention" in Article 22 of the Convention clearly indicated that the States parties might choose between the alternatives proposed by that provision and that an applicant State was not obliged to exhaust both methods (para. 49).

(b) The Committee was an expert monitoring body entitled to adopt non-binding recommendations. A principle of *lis pendens* or *electa via*, which would rule out proceedings concerning the same matter by a body entitled to adopt a legally binding judgment, was not applicable. The ICJ had reached a similar conclusion in *Georgia* v. *Russian Federation*.[10] The ICJ could always suspend its proceedings until the Committee had reached its conclusion (paras. 50-1).

(c) There appeared to be no risk to procedural fairness or equality of arms by parallel proceedings, which essentially meant concurrent in time since the purport and scope of the decision called for in the two proceedings were dissimilar (paras. 51-2).

(3) The respondent State's argument concerning the absence of the term "nationality" in the definition of racial discrimination prohibited by the Convention was rejected. The allegations in the communication did not fall outside the scope of competence *ratione materiae* of the Convention.

[10] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation)*, 161 ILR 1. See 161 ILR 1 at 46 (para. 114) and 161 ILR 1 at 274 (para. 93 of Judge Cançado Trindade's Dissenting Opinion).

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(a) "Nationality" was not mentioned as a ground of prohibited racial discrimination in Article 1(1) of the Convention, and Article 1(2) stated that the Convention did not apply to distinctions made by a State party between citizens and non-citizens. The respondent State had stressed that the Convention's *travaux préparatoires* revealed that "national origin" was understood not to cover "nationality" or "citizenship" (paras. 55-6).

(b) According to Article 1(3) of the Convention,[11] there was, however, to be no discrimination against any particular nationality in the relevant legal provisions of States parties. In its subsequent practice, the Committee had repeatedly called upon States parties to address instances of discrimination against non-citizens on the basis of their nationality. Any distinction based on citizenship required a legitimate aim, and proportionality in achieving that aim, and there was a duty to protect non-citizens from States parties' arbitrariness; States parties had also to ensure that non-citizens were not subject to collective expulsion[12] (paras. 57-62).

(c) The Committee exercised its competence *ratione materiae* when confronted with differences of treatment based on nationality. Although Article 1(2) of the Convention prevented it from considering any difference of treatment between citizens and non-citizens, it was competent to examine whether such differences pursued a legitimate aim, were proportionate to achieving that aim and did not result in a denial of fundamental human rights of non-citizens. It was only when those requirements were fulfilled, and a different treatment did not discriminate against any particular nationality, that that different treatment did not constitute discrimination as prohibited by the Convention (para. 63).

(4) An ad hoc Conciliation Commission was to be appointed in accordance with Article 12(1) of the Convention with a view to an amicable solution of the matter on the basis of the States parties' compliance with the Convention (para. 65).

The text of the decision of the Committee on the admissibility of the communication commences at p. 585. The following is the text of the decision of the Committee on its jurisdiction:

DECISION ON JURISDICTION OF COMMITTEE (27 AUGUST 2019)

1. The present document has been prepared pursuant to article 11 of the Convention on the Elimination of All Forms of Racial Discrimination.

[11] Article 1(3) of the Convention provided 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."

[12] See General Recommendation No 30, which is reproduced at p. 000.

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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 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. The present 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, pursuant to article 11 of the Convention. The present document contains a summary of the main arguments regarding the jurisdiction of the Committee 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.

I. COMMUNICATION SUBMITTED BY THE APPLICANT STATE

A. The facts as submitted by the applicant State

6. The applicant State submits that on 5 June 2017, the respondent State, in coordination with Bahrain, Egypt and Saudi Arabia (the "four States"), announced that they would impose sanctions on the applicant State, including blocking its borders and imposing economic and political sanctions. As part of this campaign, the respondent State enacted and implemented discriminatory policies directed at Qatari citizens and companies, including expelling all Qatari residents and visitors, without any justification under international law. Those acts have 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 the United Nations High Commissioner for Human Rights (OHCHR) assessed the consequences of the above-mentioned coercive measures taken by the respondent State, Bahrain and Saudi Arabia and concluded that the majority of the measures were broad and non-targeted, making no distinction between the Government of the

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applicant State and its population. OHCHR also concluded that measures targeting individuals based on their Qatari nationality or their links with the applicant State could be qualified as disproportionate and discriminatory.[1]

8. The applicant State submits that the implementation of the coercive measures targeted its people and companies on the basis only of their Qatari nationality. The applicant State also submits that early in 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. It gave Qatari diplomats 48 hours to leave the United Arab Emirates, and prevented nationals of Qatar from entering the United Arab Emirates or crossing its points of entry. The respondent State also gave Qatari residents and visitors 14 days to leave the United Arab Emirates for precautionary security reasons. The respondent State closed its airspace and seaports for all Qataris within 24 hours and banned all Qatari means of transportation from crossing, entering or leaving its territories.

10. The respondent State stated that it had taken these decisive measures because of the failure by the authorities of Qatar to abide by the Riyadh Agreement on returning Gulf Cooperation Council diplomats to Doha and its Complementary Arrangement, and the applicant State's continued support, funding and hosting of terror groups.

11. On 23 June 2017, the respondent State and Bahrain, Egypt and Saudi Arabia (through Kuwaiti mediators) issued a 13-point list of demands as the condition for ending 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. They also requested that the applicant State surrender diplomatic and strategic relationships by which it 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 the conflict, to no avail.

[1] Office of the United Nations High Commissioner for Human Rights, "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. 60-4.

[2] "Sheikh Tamim: Any talks must respect Qatar sovereignty", Al Jazeera, 22 July 2017, available at www.aljazeera.com/news/2017/07/sheikh-tamim-talks-respect-qatar-sovereignty-170721184815998.html.

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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 made up of both Qatari and Emirati nationals. Nationals of Qatar 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 Bahrain and Saudi Arabia, 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: they have led to the disruption of family unity, and 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 in interference with education. Qatari students have been prevented from accessing universities in the four States.[8] In addition to the above-mentioned violations of basic human rights, the four States have frozen assets of Qatari nationals and

[3] OHCHR, "OHCHR technical mission to the State of Qatar, 17-24 November 2017: Report on the impact of the Gulf crisis on human rights", para. 34.

[4] The Saudi Press Agency subsequently stated that the Governments of Saudi Arabia and the United Arab Emirates had issued instructions to take into consideration the humanitarian circumstances of Saudi-Qatari and Emirati-Qatari joint families in enforcing the coercive measures. See "King orders to take into consideration humanitarian situations of Saudi-Qatari joint families", Saudi Press Agency, 11 June 2017, available at www.spa.gov.sa/viewstory.php?lang=en&newsid=1638960; and "UAE President issues directives to address humanitarian cases of Emirati-Qatari joint families", Saudi Press Agency, 11 June 2017, available at www.spa.gov.sa/viewstory.php?lang=en&newsid=1638974.

[5] OHCHR, "OHCHR technical mission to the State of Qatar, 17-24 November 2017: Report on the impact of the Gulf crisis on human rights", para. 34.

[6] See www.spa.gov.sa/viewstory.php?lang=cn&newsid=1639637.

[7] "General Civil Aviation Authority closes down Qatar Airways offices in the UAE", Emirates News Agency, 7 June 2017, available at http://wam.ae/en/details/1395302617967.

[8] See, generally, National Human Rights Committee (Qatar), "Educational institutions in the countries of the blockade are improper educational destination: What does the future hold for students under violations of the right of education?"; "Qatar: Isolation causing rights abuses", Human Rights Watch, 12 July 2017, available at www.hrw.org/news/2017/07/13/qatar-isolation-causing-rights-abuses;

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limited financial transfers by citizens or residents of the applicant State.[9]

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 has 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 citizens of Qatar solely on the basis of their nationality, without any legitimate justification or 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 submits that the respondent State has breached 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 International Court of Justice,[12] the Arab Charter on Human Rights,[13] the

and OHCHR, "OHCHR technical mission to the State of Qatar, 17-24 November 2017: Report on the impact of the Gulf crisis on human rights", paras. 50-3.

[9] National Human Rights Committee (Qatar), "Fourth general report on the violations of human rights arising from the blockade on the State of Qatar", pp. 12-13.

[10] See, generally, the Committee's general recommendation No 30 (2004) on discrimination against non-citizens.

[11] A/63/18, para. 110.

[12] The International Court of Justice later issued a judgment, on 1 April 2011, finding that certain procedural preconditions outlined in art. 22 of the Convention 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 were under a duty to comply with their obligations under the Convention, of which they had been reminded in that order; see the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, ICJ Reports 2011*, p. 74, para. 186.

[13] Of 22 May 2004, which entered into force on 15 March 2008; see art. 26(2).

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European Court of Human Rights[14] and the Inter-American Court of Human Rights,[15] recognize that mass expulsions based on ethnicity or nationality constitute a violation of human rights.

17. The applicant State submits that prohibiting nationals of Qatar from entering into or passing through the respondent State's territory, and recalling the applicant State's citizens[16] without any individual consideration, clearly violate the Convention's prohibition on discrimination on the basis of national origin, including discrimination against non-citizens as set out in the Committee's general recommendation No 30 (2004) on discrimination against non-citizens.

18. The applicant State argues that the respondent State has violated articles 2 and 5 of the Convention, by failing not only to eliminate racial discrimination in all its forms but also 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 respondent State, by enacting and enforcing the coercive measures, has violated a number of the human rights recognized under international law and enumerated in article 5 of the Convention, and has interfered with the rights of nationals of Qatar.

20. By recalling the respondent State's citizens from the applicant State, and prohibiting the respondent State's citizens 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) of the Convention.

21. The applicant State further submits that the respondent State has triggered a manipulation of the press and spread false statements and ideas against Qatari media outlets and has blocked the transmission of Al Jazeera and other Qatari stations and websites. It considers that this amounts to interference with the right to freedom of expression, and transgresses 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,

[14] Ibid. See also European Court of Human Rights, *Čonka* v. *Belgium* (application No 51564/99), judgment of 5 February 2002; *Georgia* v. *Russia* (application No 13255/07), judgment of 3 July 2014; *Shioshvili and others* v. *Russia* (application No 19356/07), judgment of 20 December 2016; *Berdzenishvili and others* v. *Russia* (application Nos 14594/07, 14597/07, 14976/07, 14978/07, 15221/07, 16369/07 and 16706/07), judgment of 20 December 2016.

[15] See, for example, the *Case of Expelled Dominicans and Haitians* v. *Dominican Republic*, judgment of 28 August 2014.

[16] Saudi Press Agency, "United Arab Emirates severs relations with Qatar", 5 June 2017, available at http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1637351.

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who have been expelled and prohibited from travelling between Qatar and the United Arab Emirates 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 education,[18] as many university students were forced to interrupt their programmes of study in the respondent State and return home to the applicant State.[19]

23. The applicant State submits that the respondent State has violated 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". The coercive measures, and in particular the forced expulsion of citizens of Qatar 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 do not comply.[20]

24. In violation of article 5(d)(v) of the Convention, the respondent State, through the coercive measures, has severely disrupted property rights of citizens of Qatar, who have been denied the ability to access, enjoy, utilize or manage their property.

25. The applicant State also claims that the respondent State has denied citizens of Qatar the right to equal treatment before tribunals, in violation of article 5(a) of the Convention. Citizens of Qatar have effectively been unable to enter the United Arab Emirates, hire an attorney, challenge discrimination, have their voices heard, or otherwise exercise their rights. The applicant State submits that the respondent State has departed from its obligation under article 4(a) and (c) of the Convention to condemn racial hatred and incitement, and from its duty to prevent "public authorities or public institutions, national or local" from promoting or inciting racial discrimination.[21]

[17] National Human Rights Committee (Qatar), "Second report regarding the human rights violations as a result of the blockade on the State of Qatar", p. 23; and Peter Beaumont, "Human cost of the Qatar crisis: 'Families are being torn apart'", *The Guardian*, 14 June 2017, available at www.theguardian.com/world/2017/jun/l4/human-cost-of-the-qatar-crisis-families-are-being-torn-apart.

[18] See the Committee's general recommendation No 30, para. 31.

[19] For example, a 23-year-old Qatari medical student was forced to leave classes in the United Arab Emirates 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, available at www.latimes.com/world/middleeast/la-fg-qatar-blockade-20170619-story.html.

[20] National Human Rights Committee (Qatar), "Second report regarding the human rights violations as a result of the blockade on the State of Qatar", pp. 12-15. At the beginning of the crisis, the National Human Rights Committee received numerous complaints from nationals of the United Arab Emirates who were unable to work following the coercive measures.

[21] International Convention on the Elimination of All Forms of Racial Discrimination, art. 4(c).

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The respondent State also has not complied with its obligation to punish ideas based on racial superiority or hatred, and incitement to racial discrimination.[22]

26. The applicant State submits that the respondent State has violated its obligation under article 6 of the Convention, with regard to the failure by the respondent State 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 period set forth under that article, and to take all necessary steps to end the coercive measures, which were in violation of international law and its obligations under the Convention. The applicant State reserved its right to supplement and amend its communication, in the light of developments, as well as its request for relief, and its right to all other dispute resolution avenues open to it.

II. SUBMISSION OF THE RESPONDENT STATE

A. Absence of violations of the Convention

28. The respondent State, in its submission dated 7 August 2018, rebuts all the facts and alleged violations submitted by the applicant State. Several elements of the respondent State's submission relate to the merits of the communication.[23]

29. The respondent State denies the allegations of mass expulsion of Qatari citizens, travel ban against Qataris who wish to enter the respondent State, and violations of human rights linked to discrimination (health, education, work, and so on). The respondent State claims that it did not enforce the portion of the coercive measures of 5 June 2017 that concerned the announcement by the Ministry of Foreign Affairs and International Cooperation calling on citizens of Qatar 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 the Convention, and therefore does not fall within the scope of article 11 of the Convention.

[22] Ibid., art. 4(a).

[23] Response of the United Arab Emirates of 7 August 2018 to the communication submitted by Qatar to the Committee on 8 March 2018, paras. 1-90.

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B. Non-exhaustion of domestic remedies

30. The respondent State considers that the applicant State has not shown that the domestic remedies available to citizens of Qatar 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 has wrongly treated each provision (e.g. the right to health, the right to education) 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 recalls that, on 11 June 2018, the applicant State instituted proceedings against the respondent State in the International Court of Justice under article 22 of the Convention requesting the indication of provisional measures of protection under the Convention. The International Court of Justice issued its order on 23 July 2018 in respect of the provisional measures requested by the applicant State. The Court refused to grant any measures in the form sought by the applicant State, and instead indicated limited measures in three areas (family reunification, education, and access to justice). The respondent State also recalls that, in its order, the International Court of Justice 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 International Court of Justice to be completed prior to commencing proceedings before the Committee, as required under article 22 of the Convention.

III. ADDITIONAL SUBMISSIONS OF THE RESPONDENT STATE

32. In two additional submissions dated 29 November 2018[24] and 14 January 2019,[25] the respondent State further develops its arguments on the issues of the jurisdiction of the Committee and the admissibility of the communication. The second additional submission is pursuant

[24] Supplemental response of the United Arab Emirates to the request made by Qatar pursuant to art. 11 of the Convention, dated 29 November 2018.

[25] Supplemental response of the United Arab Emirates on issues of jurisdiction and admissibility, dated 14 January 2019, pursuant to the decision adopted by the Committee on 14 December 2018.

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to the decision adopted by the Committee on 14 December 2018. The two submissions reiterate the main arguments developed in the submission of 7 August 2018. Since the issue of the jurisdiction of the Committee has to be settled before the Committee can examine the admissibility of the communication, only the arguments developed on the issue of the Committee's jurisdiction will be treated below.

A. Lack of jurisdiction

33. Concerning the question of jurisdiction, the respondent State's arguments are based on two elements: 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 absence of prohibited treatment carried out on the basis of current nationality[26]

34. The respondent State argues that the Convention does not prohibit differentiated treatment based on current nationality.[27]

35. The respondent State claims that while the International Court of Justice deferred the question of whether the expression "national origin" mentioned in article 1(1) of the Convention encompassed discrimination based on the present nationality of the individual, with the Court holding that it need not decide which of those diverging interpretations of the Convention was the correct one, no judicial authorities have pronounced their support for the inclusion by Qatar of current nationality as a prohibited basis for differentiated treatment under the Convention.[28] The respondent State submits that several judges' opinions consider that the term "national origin" does not refer to nationality.[29]

[26] Supplemental response of the United Arab Emirates to the request made by Qatar pursuant to art. 11 of the Convention, dated 29 November 2018.

[27] Supplemental response of the United Arab Emirates on issues of jurisdiction and admissibility, dated 14 January 2019, pursuant to the decision adopted by the Committee on 14 December 2018, paras. 18-21.

[28] Ibid., para. 19.

[29] See the positions of Judges Tomka, Gaja and Gevorgian 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 of 23 July 2018*, joint declaration of Judges Tomka, Gaja and Gevorgian, para. 4; and the supplemental response of the United Arab Emirates on issues of jurisdiction and admissibility, dated 14 January 2019, pursuant to the decision adopted by the Committee on 14 December 2018, para. 20.

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36. The respondent State also submits that the communication only refers to differentiated treatment on the basis of 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 with racial discrimination, and is prohibited per se, and, on the other hand, differentiation on the basis of 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 submits that this conclusion is confirmed by the object and purpose of the Convention as set up in the preamble to the Convention, which focuses 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 with 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 on the basis of national origin, it does not prohibit it on the basis of present nationality.[30]

38. The respondent State claims that the ordinary meaning of "national origin" is confirmed by the *travaux préparatoires* of the Convention. It considers that in view thereof, the expression "national origin" must be read in good faith in its context and in light of the object and purpose of the Convention, and that it does not encompass present "nationality".[31]

39. The respondent State argues that subsequent practice of States parties confirms that differentiation on the basis of 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 Vienna Convention on the Law of Treaties, 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. The respondent State refers to several examples of States parties that grant access to their territory, and allow

[30] Comments of the United Arab Emirates on the response of Qatar on issues of jurisdiction and admissibility, dated 19 March 2019, paras. 67-9.

[31] Ibid., paras. 70-88, for more elements on the arguments raised by the United Arab Emirates on the *travaux préparatoires*.

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foreigners to work, or to vote, based on their nationalities, without necessarily violating the Convention. The respondent State emphasizes that States parties often favour nationals of one State over nationals of another, and have enacted legislation that treats nationals of different foreign States differentially 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.[32]

40. The respondent State refutes the applicant State's arguments that the Committee's general recommendation No 30 indicates that nationality-based discrimination falls within the ambit of the Convention.[33] The respondent State submits that, in its general recommendation No 30, the Committee was clearly not purporting to suggest that all differential treatments based on citizenship (or immigration status) were impermissible under the Convention. The Committee's aim was to make clear that differential treatment on the basis of citizenship or immigration status had to be assessed in light of the objectives and purpose of the Convention.[34]

C. Lack of jurisdiction due to absence of current violations

41. The respondent State argues that the Committee lacks jurisdiction in respect of the communication because there is no evidence of any ongoing violation. The Committee and any ad hoc Conciliation Commission that may be appointed only have jurisdiction to consider allegations of ongoing violations of the Convention. The process established under articles 11-13 of the Convention is a process of conciliation, applicable 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 Convention is deliberate and determinative. Furthermore, the respondent State argues that the good offices procedure established under articles 11-13 of the Convention 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 also argues that the applicant State has not provided any proof to contest the evidence which the respondent State has submitted to the Committee demonstrating that the treatment

[32] Comments of the United Arab Emirates on the response of Qatar on issues of jurisdiction and admissibility, dated 19 March 2019, paras. 89-93.

[33] Submission of Qatar dated 14 February 2019, paras. 29-33.

[34] Comments of the United Arab Emirates on the response of Qatar on issues of jurisdiction and admissibility, dated 19 March 2019, paras. 94-8.

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afforded to nationals of Qatar in the respondent State at present complies with the Convention. The applicant State has failed to demonstrate that any of the allegations submitted by the respondent State constitute mistreatment or discrimination.[35]

43. The respondent State further argues that, even in the hypothetical scenario that a State party had 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 or entertaining progression to an ad hoc Conciliation Commission once the failure to give effect to the Convention's provisions had been rectified.

IV. COMMENTS OF THE APPLICANT STATE

A. Jurisdiction of the Committee

44. In its response dated 14 February 2019, the applicant State claims that the Committee has jurisdiction in respect of the communication because the respondent State is not giving effect to the provisions of the Convention.

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 has misinterpreted the use of the present tense contained in article 11(1) of the Convention.[36] 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, it has properly brought this matter to the Committee under article 11 of

[35] Supplemental response of the United Arab Emirates on issues of jurisdiction and admissibility, dated 14 January 2019, pursuant to the decision adopted by the Committee on 14 December 2018, para. 23.

[36] Submission of Qatar dated 14 February 2019, para. 66.

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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 Convention. It considers that the respondent State has not rectified the situation at stake.

C. Appropriateness of the Committee's consideration of the communication

47. The applicant State argues that the respondent State's argument that the Committee lacks jurisdiction, because of there being insufficient evidence of ongoing violations of the Convention, 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 Convention 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.[37] The applicant State also considers that the respondent State has wrongly questioned the availability of sufficient evidence as a factual matter. While citing the dissenting opinions of the judges of the International Court of Justice on the matter, the respondent State omits the position of the majority of the International Court of Justice 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 Convention.[38]

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 such as the country's National Human Rights Committee.[39] The International Court of Justice specifically observed

[37] Ibid., para. 69.

[38] *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 of 23 July 2018*, para. 54. In the context of individual complaints brought pursuant to art. 14 of the Convention, the Committee has found that a complaint is admissible so long as the violations alleged may fall within the scope of the Convention. See, for example, *Hagan* v. *Australia* (CERD/C/62/D/26/2002), para. 6.2.

[39] Submission of Qatar dated 14 February 2019, para. 71.

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that the consequences of the coercive measures still persisted,[40] in particular on students, who had 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 ON THE JURISDICTION OF THE COMMITTEE AND THE 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 2018[41] and 14 January 2019[42] on lack of jurisdiction of the Committee due to absence of prohibited treatment carried out on the basis of current nationality and absence of current violations.

50. The respondent State considers 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, is not valid. The respondent State submits that the applicant State's arguments that the coercive measures have an impact on people identified on the basis of their historical-cultural characteristics as Qataris, are untenable. The geographical proximity, the common cultural and social background, the common language and the close ties and interconnectedness of the populations of Qatar and the United Arab Emirates[43] 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 origins is insufficient to bring the measure within the scope of the Convention if there is no discrimination "based on" national or ethnic origin.

[40] *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 of 23 July 2018*, para. 68.

[41] Supplemental response of the United Arab Emirates to the request made by Qatar pursuant to art. 11 of the Convention, dated 29 November 2018.

[42] Supplemental response of the United Arab Emirates on issues of jurisdiction and admissibility, dated 14 January 2019, pursuant to the decision adopted by the Committee on 14 December 2018.

[43] *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 2018/12 of the public sitting held on 27 June 2018, at 10 a.m., para. 2 (Mohammed Abdulaziz Al-Khulaifi).

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51. The respondent State considers that the 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 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 in respect of the inter-State communication submitted on 8 March 2018 by Qatar against the United Arab Emirates, and that the communication is admissible.

53. On 3 May 2019, the Committee, pursuant to its decision of 14 December 2018, conducted hearings on the issues of jurisdiction and admissibility, with the participation of one representative from each party, in accordance with article 11(4) and (5) of the Convention and the relevant rules of procedure adopted by the Committee on 29 April 2019.[44]

A. Jurisdiction of the Committee

54. At the outset, the Committee notes that Qatar has been a State party to the Convention since 22 July 1976 and the United Arab Emirates has been 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 "current and ongoing 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

[44] In order to address the issues of jurisdiction and admissibility, the Committee adopted on 29 April 2019 its 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.

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racial discrimination as prohibited by the Convention. In its supplemental response of 29 November 2018, that issue was 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 the article 11 communication submitted by Qatar falls outside the scope *ratione materiae* of the Committee.

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 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, arguing that the Committee's jurisdiction extends only to current and ongoing violations of the Convention, not allegations of past conduct. The views of the respondent State on this issue are contested by the applicant State 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, in which it is stated 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 State, the Committee decides that it has jurisdiction to examine the exceptions of inadmissibility raised by the respondent State.

[Report: UN Doc. CERD/C/99/3]

[The following is the text of the decision of the Committee on admissibility:]

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DECISION ON ADMISSIBILITY OF COMMUNICATION (27 AUGUST 2019)

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.

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

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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 the 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

[1] *Interhandel (Switzerland* v. *United States of America), ICJ 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. 44-6. See also *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Preliminary Objections, Judgment, ICJ 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").

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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 Emirates. For example, the Legal Affairs Department 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

[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/individualservicescontent/cybercrime.

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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 of 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 provision of transcripts.

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 Emiratisation.[13] An

[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. 67-8, 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 "Customer complaints" web page of the Ministry of Health and Prevention, available at www.mohap.gov.ae/en/services/customer-complaints.aspx.

[12] See https://mc.dha.gov.ae/.

[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 www.mohre.gov.ae/en/tawteen-gate/complaint-system.aspx.

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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

[14] See the "Register labour complaints" web page of the Ministry of Human Resources and Emiratisation, 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, ICJ Reports 2007*, p. 599, paras. 42-4.

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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] 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

[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 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, ICJ 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, ICJ Reports 2011*, p. 128, para. 141.

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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.

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

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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

[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").

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

27. As for 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 that alleges 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]

[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, ICJ 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).

[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*

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

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, ICJ 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, ICJ Reports 2011*, para. 183.

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(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 also would 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 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.

[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, ICJ Reports 2011*, para. 47.

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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 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 of 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;

(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 on 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;

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(f) The risk of *lis pendens* and *electa una via non datur recursus ad alteram* cannot be ignored.

35. The respondent State argues that this 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

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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 has to 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".

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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".

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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 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

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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 the 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 the 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, 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"

[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, ICJ Reports 2008*, p. 388, para. 114.

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and "does not prohibit differentiated treatment based on current nationality". In both 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 (the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, the Commission on Human Rights and the Third Committee), the ground or 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

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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]

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

[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.
[32] Ibid., paras. 26 and 28.

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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 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.

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

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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 All Forms 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).

[Report: UN Doc. CERD/C/99/4]

APPENDIX: GENERAL RECOMMENDATION XXX ON DISCRIMINATION AGAINST NON-CITIZENS (2004)

The Committee on the Elimination of Racial Discrimination,

Recalling the Charter of the United Nations and the Universal Declaration of Human Rights, according to which all human beings are born free and equal in dignity and rights and are entitled to the rights and freedoms enshrined therein without distinction of any kind, and the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination,

Recalling the Durban Declaration in which the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, recognized that xenophobia against non-nationals, particularly migrants, refugees and asylum-seekers, constitutes one of the main sources of contemporary racism and that human rights violations against members of such groups occur widely in the context of discriminatory, xenophobic and racist practices,

Noting that, based on the International Convention on the Elimination of All Forms of Racial Discrimination and general recommendations XI and XX, it has become evident from the examination of the reports of States parties to the Convention that groups other than

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migrants, refugees and asylum-seekers are also of concern, including undocumented non-citizens and persons who cannot establish the nationality of the State on whose territory they live, even where such persons have lived all their lives on the same territory,

Having organized a thematic discussion on the issue of discrimination against non-citizens and received the contributions of members of the Committee and States parties, as well as contributions from experts of other United Nations organs and specialized agencies and from non-governmental organizations,

Recognizing the need to clarify the responsibilities of States parties to the International Convention on the Elimination of All Forms of Racial Discrimination with regard to non-citizens,

Basing its action on the provisions of the Convention, in particular article 5, which requires States parties to prohibit and eliminate discrimination based on race, colour, descent, and national or ethnic origin in the enjoyment by all persons of civil, political, economic, social and cultural rights and freedoms,

Affirms that:

I. Responsibilities of States parties to the Convention

1. Article 1, paragraph 1, of the Convention defines racial discrimination. Article 1, paragraph 2 provides for the possibility of differentiating between citizens and non-citizens. Article 1, paragraph 3 declares that, concerning nationality, citizenship or naturalization, the legal provisions of States parties must not discriminate against any particular nationality;

2. Article 1, paragraph 2, must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights;

3. Article 5 of the Convention incorporates the obligation of States parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights. Although some of these rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens, human rights are, in principle, to be enjoyed by all persons. States parties are under an obligation to guarantee equality between citizens and non-citizens in

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the enjoyment of these rights to the extent recognized under international law;

4. 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. Differentiation within the scope of article 1, paragraph 4, of the Convention relating to special measures is not considered discriminatory;

5. States parties are under an obligation to report fully upon legislation on non-citizens and its implementation. Furthermore, States parties should include in their periodic reports, in an appropriate form, socio-economic data on the non-citizen population within their jurisdiction, including data disaggregated by gender and national or ethnic origin;

Recommends,

Based on these general principles, that the States parties to the Convention, as appropriate to their specific circumstances, adopt the following measures:

II. Measures of a general nature

6. Review and revise legislation, as appropriate, in order to guarantee that such legislation is in full compliance with the Convention, in particular regarding the effective enjoyment of the rights mentioned in article 5, without discrimination;

7. Ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens;

8. Pay greater attention to the issue of multiple discrimination faced by non-citizens, in particular concerning the children and spouses of non-citizen workers, to refrain from applying different standards of treatment to female non-citizen spouses of citizens and male non-citizen spouses of citizens, to report on any such practices and to take all necessary steps to address them;

9. Ensure that immigration policies do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin;

10. Ensure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour,

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descent, or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping;

III. Protection against hate speech and racial violence

11. Take steps to address xenophobic attitudes and behaviour towards non-citizens, in particular hate speech and racial violence, and to promote a better understanding of the principle of non-discrimination in respect of the situation of non-citizens;

12. Take resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of "non-citizen" population groups, especially by politicians, officials, educators and the media, on the Internet and other electronic communications networks and in society at large;

IV. Access to citizenship

13. Ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization, and to pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents;

14. Recognize that deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States parties' obligations to ensure non-discriminatory enjoyment of the right to nationality;

15. Take into consideration that in some cases denial of citizenship for long-term or permanent residents could result in creating disadvantage for them in access to employment and social benefits, in violation of the Convention's anti-discrimination principles;

16. Reduce statelessness, in particular statelessness among children, by, for example, encouraging their parents to apply for citizenship on their behalf and allowing both parents to transmit their citizenship to their children;

17. Regularize the status of former citizens of predecessor States who now reside within the jurisdiction of the State party;

V. Administration of justice

18. Ensure that non-citizens enjoy equal protection and recognition before the law and in this context, to take action against racially motivated violence and to ensure the access of victims to effective legal

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remedies and the right to seek just and adequate reparation for any damage suffered as a result of such violence;

19. Ensure the security of non-citizens, in particular with regard to arbitrary detention, as well as ensure that conditions in centres for refugees and asylum-seekers meet international standards;

20. Ensure that non-citizens detained or arrested in the fight against terrorism are properly protected by domestic law that complies with international human rights, refugee and humanitarian law;

21. Combat ill-treatment of and discrimination against non-citizens by police and other law enforcement agencies and civil servants by strictly applying relevant legislation and regulations providing for sanctions and by ensuring that all officials dealing with non-citizens receive special training, including training in human rights;

22. Introduce in criminal law the provision that committing an offence with racist motivation or aim constitutes an aggravating circumstance allowing for a more severe punishment;

23. Ensure that claims of racial discrimination brought by non-citizens are investigated thoroughly and that claims made against officials, notably those concerning discriminatory or racist behaviour, are subject to independent and effective scrutiny;

24. Regulate the burden of proof in civil proceedings involving discrimination based on race, colour, descent, and national or ethnic origin so that once a non-citizen has established a prima facie case that he or she has been a victim of such discrimination, it shall be for the respondent to provide evidence of an objective and reasonable justification for the differential treatment;

VI. Expulsion and deportation of non-citizens

25. Ensure that laws concerning deportation or other forms of removal of non-citizens from the jurisdiction of the State party do not discriminate in purpose or effect among non-citizens on the basis of race, colour or ethnic or national origin, and that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies;

26. 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;

27. Ensure that non-citizens are not returned or removed to a country or territory where they are at risk of being subject to serious

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human rights abuses, including torture and cruel, inhuman or degrading treatment or punishment;

28. Avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life;

VII. Economic, social and cultural rights

29. Remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health;

30. Ensure that public educational institutions are open to non-citizens and children of undocumented immigrants residing in the territory of a State party;

31. Avoid segregated schooling and different standards of treatment being applied to non-citizens on grounds of race, colour, descent, and national or ethnic origin in elementary and secondary school and with respect to access to higher education;

32. Guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, especially by avoiding segregation in housing and ensuring that housing agencies refrain from engaging in discriminatory practices;

33. Take measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects;

34. Take effective measures to prevent and redress the serious problems commonly faced by non-citizen workers, in particular by non-citizen domestic workers, including debt bondage, passport retention, illegal confinement, rape and physical assault;

35. Recognize that, while States parties may refuse to offer jobs to non-citizens without a work permit, all individuals are entitled to the enjoyment of labour and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated;

36. Ensure that States parties respect the right of non-citizens to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services;

37. Take the necessary measures to prevent practices that deny non-citizens their cultural identity, such as legal or de facto requirements

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that non-citizens change their name in order to obtain citizenship, and to take measures to enable non-citizens to preserve and develop their culture;

38. Ensure the right of non-citizens, without discrimination based on race, colour, descent, and national or ethnic origin, to have access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks;

39. The present general recommendation replaces general recommendation XI (1993).

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