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BREAKING NEWS: ICJ ORDERS PROVISIONAL MEASURES IN QATAR V UNITED ARAB EMIRATES

In a decision handed down on 23 July 2018, the International Court of Justice granted in part the provisional measures requested by Qatar against the United Arab Emirates.

Background

On 5 June 2017, it was reported that Saudi Arabia, UAE, Egypt and Bahrain had cut diplomatic ties with Qatar. A number of measures were imposed on the same day by those countries, including the closure of certain airspace, ports and land borders, and the imposition of strict restrictions upon Qatari nationals in relation to travel and residence. Over subsequent months, there was little success in attempts to resolve the dispute.

On 11 June 2018, Qatar instituted proceedings at the International Court of Justice against the United Arab Emirates, invoking the Convention on the Elimination of All Forms of Racial Discrimination. Qatar asserted that the UAE had targeted Qataris and their families for discriminatory treatment, by enacting and implementing a series of discriminatory measures directed at Qataris based expressly on their national origin.

In addition, Qatar requested that the ICJ order nine provisional measures requiring the UAE to “*cease and desist from any and all conduct that could result, directly or indirectly, in any form of racial discrimination against Qatari individuals by any organs, agents, persons and entities exercising UAE governmental authority in its territory, or under its direction or control*”, as well as requiring the UAE to abstain from any measure that might aggravate, extend or make more difficult resolution of the dispute, or any other measure that might prejudice the rights of Qatar in the dispute before the ICJ.

Pursuant to Article 31 of the statute of the Court, both Qatar and the UAE were entitled to appoint a judge ad hoc, with Qatar nominating Yves Daudet and the UAE nominating Jean-Pierre Cot.

Public sittings in the case took place between 27-29 June 2018.

Decision

In an order handed down on 23 July 2018, the ICJ partially granted (by a majority) Qatar’s request for provisional measures.

By eight votes to seven (in favour President Yusuf; Vice President Xue; Judges Abraham, Bennouna, Cancado Trindade, Sebutinde, Robinson; Judge ad hoc Daudet; and against, Judges Tomka, Gaja, Bhandari, Crawford, Gevorgian, Salam; Judge ad hoc Cot), the UAE must ensure:

- (i) *Families that include a Qatari, separated by the measures adopted by the United Arab Emirates on 5 June 2017, are reunited;*
- (ii) *Qatari students affected by the measures adopted by the UAE on 5 June 2017 are given the opportunity to complete their education in the UAE or to obtain their educational records if they wish to continue their studies elsewhere; and*
- (iii) *Qataris affected by the measures adopted by the UAE on 5 June 2017 are allowed access to tribunals and other judicial organs of the UAE.*

The other six provisional measures sought by Qatar were not granted.

By eleven votes to four (in favour President Yusuf; Vice President Xue; Judges Tomka, Abraham, Bennouna, Cancado Trindade, Gaja, Sebutinde, Bhandari, Robinson; Judge ad hoc Daudet; and against, Judges Crawford, Gevorgian, Salam; Judge ad hoc Cot):

Both parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

Additional note

This is not the only case pending before the ICJ relating to the measures taken by the blockading countries against Qatar. On 4 July 2018, the Kingdom of Bahrain, the Arab Republic of Egypt and the United Arab Emirates filed two applications:

- a joint Application constituting an appeal against the decision rendered by the Council of the International Civil Aviation Organization (the “ICAO Council”) on 29 June 2018, in proceedings initiated by the State of Qatar against these three States on 30 October 2017, pursuant to Article II, Section 2, of the International Air Services Transit Agreement.
- a joint Application constituting an appeal against the decision rendered by the ICAO Council on 29 June 2018, in proceedings initiated by the State of Qatar against these four States on 30 October 2017, pursuant to Article 84 of the Convention on International Civil Aviation (the “Chicago Convention”).

In the decisions on 29 June 2018, the ICAO Council rejected the UAE, Bahrain and Egypt’s preliminary objections to Qatar’s applications.

In both applications, the UAE, Bahrain and Egypt request that the ICJ adjudge and declare:

“(1) [t]hat the decisions of the ICAO Council dated 29 June 2018 reflects a manifest failure to act judicially on the part of the ICAO Council, and a manifest lack of due process in the procedure adopted by the ICAO Council; and

(2) [t]hat the ICAO Council is not competent to adjudicate upon the disagreements between the State of Qatar and the Applicants submitted by Qatar to the ICAO Council by Qatar’s applications dated 30 October 2017; and

(3) [t]hat the decisions of the ICAO Council dated 29 June 2018 in respect of both applications is null and void and without effect.”