

The Place of Combating Racial Discrimination in International Law and Crisis Control (A case study of the Court's jurisprudence in the case of Qatar v. U.A.E.)

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ABSTRACT

Undoubtedly, a world without discrimination is a requirement of peace and tranquillity, and the efforts of the United Nations and its affiliated organizations, such as the Committee on the Elimination of Racial Discrimination (CERD), aim to achieve these goals. We have seen many examples of racial discrimination in the past, some of which have led to lawsuits in the International Court of Justice and the Committee on the Elimination of Racial Discrimination. However, there are essential points, such as the correct definition of racial discrimination and its various forms. In this paper, the concept of racial discrimination in international documents and conventions has been explained. Then the case of Qatar against the U.A.E. on the subject of racial discrimination is investigated in the position of the International Court of Justice and the Committee on the Elimination of Racial Discrimination. Finally, by presenting the proceedings in the International Court of Justice and the Committee on the Elimination of Racial Discrimination, we try to clarify the duties of each of them and the priority of the proceedings, both in the International Court of Justice and, if necessary, to clarify the Committee and examine the position of the Committee on Racial Discrimination in international law.

Introduction

Looking at the history of discrimination and apartheid throughout history, what can be seen is the imbalance of power, wealth, popularity, and privileges, and has always been associated with the deprivation of various sections of society for no good reason. Nevertheless, in examining the cause of differences, the main question is why discrimination exists and occurs even in

developed and civilized societies. The derivations due to skin colour, religion and other forms of discrimination, what is certain is the ignorance and lack of perception of the concept of humanity. Following the Industrial Revolution, human beings have faced new forms of discrimination, which following historical developments, the diversity of these discriminations have become more diverse.

Looking at the ideological cause of World War II and Nazi nationalism, the World community realized the importance of combating racial discrimination more than ever, and the founding of the United Nations was its main turning point. The United Nations' main slogan was the call for peace and respect for human rights and fundamental freedoms, focusing on the Universal Declaration of Human Rights and international instruments, and by relying on these slogans, significant steps have been taken in combating all forms of discrimination, whether discrimination in the right to vote at the United Nations or discrimination against all races around the world.

One of these measures was the ratification of the Convention on the Elimination of All Forms of Racial Discrimination in 1965 by the United Nations General Assembly, which caused the establishment of the Committee on the Elimination of All Forms of Racial Discrimination in 1970. This Convention was one of the best examples of efforts to eradicate discrimination and pay attention to human rights and freedoms. Most importantly, this Convention provided a precise definition of all types of discrimination to prevent the misuse of interpretations. By attracting qualified experts' opinions while issuing a statement, the Committee has tried to eliminate any discrimination and apartheid and then find a suitable solution to the effects of discrimination. However, sometimes discrimination is due to the entry of political differences between states into the international community, in which case the Committee tries to interpret and clarify the

causes of the dispute and identify discrimination and compromise and eliminate its effects. If the Committee fails to reach a settlement or disagreement in the interpretation and implementation of the contract, the parties will file a lawsuit to the International Court of Justice to protect their rights. However, examining the priority of the entry of these two elements and the position of each is a point of attention. The occurrence of discriminatory acts despite the membership of countries in this Committee can indicate various factors, including the predominance of interests, the lack of a proper understanding of the concepts of discrimination, or even its misinterpretation. Sometimes trying to maintain territorial integrity has been accompanied by the destruction of a nation, and hindering the use of their rights is another reason for discrimination.

Finally, in the world community, what can help to eliminate any racial discrimination is the rejection of its perpetrators and the tarnishing of their global image in the first place. Indeed, the membership of countries in organizations, committees, and institutions to eliminate racial discrimination and implement their goals is an excellent step towards realizing these purposes.

In this study, we first get familiarised with the concept of racial discrimination and the reasons for combating it. Then we examine the case of Qatar against the U.A.E. in the International Court of Justice. The main question will be whether the Court's decision not to recognize its jurisdiction, in this case, was correct due to the issuance of an interim

injunction in favour of Qatar or not. Finally, we will consider the lawsuit and referral of the case to the Committee on the Elimination of Racial Discrimination from the point of view of current procedures in international law.

1. The concept of racial discrimination and the basis of its prohibition

Among all the types of discrimination, racial discrimination has taken the most victims, and as a result, the world community has paid particular attention to it. In addition to the principle of non-discrimination, which is explicitly considered as the umbrella of all human rights frameworks, article 20 of the International Covenant on Civil and Political Rights specifically prohibits all forms of racial discrimination.

Racial discrimination: refers to any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin, the purpose or effect of which is to destroy, threaten, or endanger the recognition of equal human rights and fundamental freedoms in the political, social, and cultural domain, or any other part of public life.

Racial discrimination in article 1, paragraph 1, of the International Convention elimination of all forms of racial discrimination, is defined as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and

fundamental freedoms in the political, economic, social, cultural or any other field of public life."

According to Article 1 of the Convention, racial discrimination includes discrimination based on colour, ethnicity, or nationality; however, The Convention also prohibits discrimination based on descent. According to it, descent racial discrimination is "any social stratification, including class or class or other inherited status."

In two Inter-American Conventions against Racism, Racial Discrimination and Related Forms of Intolerance, adopted in 2013, racial discrimination was defined as:

"Any distinction, exclusion, restriction or preference in any area of public or private life which is intended to nullify or curtail the equal recognition, enjoyment or exercise of one or more of the fundamental human rights and freedoms set forth in international instruments applicable in the Member States. Racial discrimination may be based on race, colour, lineage, or national or ethnic origin."

Both conventions, with the same literature, require governments to take actions such as disseminating, circulating, or disseminating discriminatory content in any form, and prevent, eliminate, prohibit and punish any means of communication, including the Internet, in such a way as to compel, promote or incite hatred, discrimination or intolerance. These two conventions prohibit discrimination on the basis of descent, and it is not clear whether they include ethnicity or

origin (mentioned in other international instruments).

2. The historical process of "race" formation:

The historical process of race formation shows that the concept of the race first appeared in Western literature and at a time when, following geographical discoveries and political expansionism, Europeans encountered people from other continents and countries.

Appearance differences such as skin colour along with different and sometimes unacceptable lifestyles of other people led to reflections on physical, social, and cultural differences. Since then, biological and natural studies on human differences have begun; they eventually led to human typology and the classification of humans in the natural sciences. Such a classification emerged in the form of the ideology of scientific racism in the seventeenth century. In this ideology, races were introduced as Introductory matters, some biological and genetic traits were recognized as superior and some as inferior, which eventually led to the ranking of human groups. In this ideology, the most appropriate and desirable traits were attributed to whites and Europeans, while the most undesirable characteristics reflected other races' features. The emergence of three ideas of racial superiority, such as Nazism, fascism, the

humiliation of coloured Americans, and blacks in Africa, are manifestations of racial discrimination¹.

The concept of race was formed with colonialism and lost its face with the emergence of anti-colonial movements. Nevertheless, even today, it still affects patterns of inequality in society. For this reason, humanities and cultural anthropologists have redefined the concept of race not as an objective reality but as a social construct and a cultural category. In other words, the concept of race has not disappeared throughout history nevertheless has only changed from a biological and geographical form to other forms such as nationality or ethnicity². Today, the discourse of ethnicity has replaced race, emphasizing cultural and ethnic differences rather than biological and genetic differences. Some characteristics are considered desirable among cultural and ethnic differences, and others are undesirable.

The prohibition of racial discrimination is also linked to the protection of the rights of minorities, and the Convention on the Elimination of All Forms of Racial Discrimination is part of the rights of minorities in the international (U.N.) human rights system. The idea of minority rights seeks to protect the individual rights that all human beings, including minorities, enjoy and supervise the collective rights of minorities, which upholds the right to identity and self-determination of minority groups. The

¹ Hashemi-2005

² Abbasi, Heidari, 2016

prohibition of incitement to racial discrimination seems to be primarily concerned with the collective rights of racial groups.

Racial discrimination is the real reason behind the violence; as a result, incitement to violence and incitement to hatred are prohibited. Violence and hatred have a different definition than discrimination. Discrimination is the differentiation, deprivation, restriction, or superiority that results in the recognition, enjoyment or equal exercise of human rights and freedoms. In comparison, hatred is a mental state that includes negative feelings against others, contempt, hostility, and disgust towards the target group. Violence also means the deliberate use of force or physical strength that may lead to injury, death, psychological damage, improper growth, or deprivation³.

3. Principles for Prohibition of Racial Discrimination:

The race is a concept for dividing human beings and is mainly based on physical, relative, and geographical characteristics that have evolved conceptually over time. There is no single definition of race, and at the same time, the existence of similar concepts such as descent and ethnicity alongside it makes this concept more complex and ambiguous and puts the social and cultural dimensions next to the biological aspect of this concept. According to what was mentioned in the historical process of the formation of racial

discrimination, if eradication of racial discrimination is not appropriately addressed, violence, hatred, and conflict at the national and international levels will increase day by day, and the history of world wars ignited by racial slogans may once again affect humanity.

4. Convention on the Elimination of All Forms of Racial Discrimination:

The International Convention on the Elimination of All Forms of Racial Discrimination was adopted by the United Nations General Assembly on December 21, 1965, and entered into force on January 4, 1969. The Convention is the most comprehensive legal mechanism for combating racism and various forms of racism. The Convention declares a wide range of legal provisions to address racial discrimination in areas of political, economic, social, and cultural disruption, which includes outlawing hate speech and the lack of legitimacy of the activities of organizations based on racist acts, in which it has provided the right to compensation for victims of racial discrimination⁴. The Committee on the Elimination of All Forms of Racial Discrimination was established in 1970 under Article 8 of the Convention on the Elimination of All Forms of Racial Discrimination.

Reasons for initiating the drafting process, later known as the International Convention on the Elimination of All Forms of Racial Discrimination, were manifestations of anti-

3 Sharifi, Tarazkoohi, Qarabaghi, 2014

4 See Boven, 2016, pp. 109-110

Semitism and cases of national and racial hatred and prejudices of a similar nature to religion and race⁵. From the beginning and even at the time of the ratification of the Convention by the governments, there was no common understanding of the meaning of racial discrimination or the reasons for this phenomenon. At the same time, the issue of defining racial discrimination remains somewhat challenging among member states and members of the Committee on the Elimination of Racial Discrimination. Another reason why the Convention was so widely accepted is that the UN Charter had already recognized the rule of non-discrimination on the basis of the principle of non-discrimination. The International Court of Justice states: The establishment and implementation of distinctions, deprivations and restrictions on the basis of race, colour, descent or national and ethnic origin which lead to the denial of fundamental human rights is a clear violation of the principles and objectives of the Charter⁶.

Different approaches were proposed at the time of drafting the Convention, and only some measures are reflected in its introduction, including points on the condemnation of colonialism and secession of countries. The Declaration of the United Nations General Assembly of 14 December 1960 on granting independence to the colonized countries and peoples was also emphasized, thus acknowledging the need to expedite the end of colonization without any

conditions⁷. In the preamble to the Convention, racial discrimination is considered an obstacle to friendly and peaceful relations between nations, so this issue can practically disrupt peace and security between nations. For instance, The Convention has sought to link Article 39 of the UN Charter to the Convention by pointing out that racial discrimination poses a potential threat to peace and security. Even though this issue has not been explicitly addressed by the Security Council⁸, on the other hand, racial discrimination has been considered a tool for violating human dignity. This puts the Convention in the context of other human rights mechanisms, in particular the International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights⁹.

5. Committee on the Elimination of Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination has set up a committee of eighteen qualified experts on ethical and impartiality who will serve as eligible persons and officials. Member states have chosen these experts according to the need for geographical distribution, equitable, and taking into account the various forms of civilization and major judicial systems. However, it should be noted that the members of this Committee shall be chosen by secret ballot among those nominated by the States

5 Banton, 1994, p. 475

6 ICJ Report, 1971, para. 131

7 [1960] A/Res/1514, para. 2

8 Wolfrum, 1999, p. 490

9 [1994] A / RES / 49/146, para. 9

Parties for membership of the Committee, and each State Party may select one of its citizens. Therefore, the first election took place six months after the date of implementation of this Agreement. At least three months before the date of each election, the Secretary-General in writing shall invite the States Parties to nominate their candidates within two months.

The Secretary-General of the United Nations shall therefore prepare a list of all nominees in alphabetical order, with reference to the States Parties that have nominated them, and submit it to the Contracting States. The Committee members shall be elected at a meeting of all States Parties convened by the Secretary-General of the United Nations at the headquarters of the United Nations. In this meeting, which is attended by two-thirds of the majority member states, those who receive the largest number and the absolute majority of votes of the present representatives and voters of the member states are elected for four years to the Committee. However, the terms of nine of the persons elected in the first election shall expire after two years, and the Committee's chairperson shall, immediately after the first election, determine the names of the nine members by lot. In order to replace an expert who, for unexpected reasons, has resigned from his post and duties in the Committee, his Government shall appoint another expert from its citizens subject to the approval of the Committee.

In fact, it is the first oversight committee in the body of treaty bodies related to U.N. human rights mechanisms. The Committee on

the Elimination of Racial Discrimination, with nearly half a century of experience, operates as the oversight body of the Convention with 18 members. The Convention is currently ratified by 178 member states. According to a study¹⁰, treaties and treaty institutions form the basis of the international human rights system. A member of a treaty body at the Center for Interpretation and Enforcement of International Human Rights Treaties and somehow participates in the protection and implementation of human rights at various levels, The members of the Committee shall not be liable to their respective Governments for the performance of their duties assigned to the Committee¹¹. Given the dimensions of the Convention and the understanding that comes to mind of the external aspect of the Convention, Governments often nominate foreign policy experts to join the Committee on the Elimination of Racial Discrimination. So far, this issue has affected the composition of the Committee¹².

6. Duties of the Committee on the Elimination of Racial Discrimination

Over the past half-century, the Committee on the Elimination of Racial Discrimination has made a concerted effort to combat racism and discrimination under the provisions of the Convention. This treaty institution in order to develop its work process, in addition to monitoring by reviewing member states' reports and changing some mechanisms in this regard, has taken several measures to

¹⁰ Handbook for Human Rights, 2015, pp. 1-2

¹¹ HRI/GEN/3/rev.1, p. 69

¹² Boven, 2001, p. 112

clarify general conceptual views on the subject of racism by providing interpretive theories and general advice.

7. The Convention sets out four tasks for the Committee on the Elimination of All Forms of Discrimination, which are:

- 1- Examining the reports of member states¹³
- 2- Examining complaints between governments¹⁴ ,
- 3- Examining the correspondence of individuals¹⁵,
- 4- Assisting other U.N. members in reviewing petitions from non-autonomous territories and reporting the status of the mentioned territories¹⁶ ()

The Committee has also established a mechanism for early warning and immediate action to continue its activities and respond immediately to developments and existing or emerging situations¹⁷.

8. Convention and Supplementary Opinions of the Committee on the Elimination of Racial Discrimination

The Convention contains several clauses defining the issue of racial discrimination and some exceptions and limitations in this regard,

which include an explanation of the critical areas of the requirements of the member states, and therefore the structure of the Convention is almost straightforward. The Committee on the Elimination of Racial Discrimination, as the body overseeing the implementation of the provisions of the Convention, has issued general recommendations to express its views and different interpretations on various issues of the International Convention on the Elimination of All Forms of Racial Discrimination and to raise new issues in this area.

9. Obligations of member states under the Convention on the Elimination of All Forms of Racial Discrimination¹⁸

States Parties to the Convention condemn racial discrimination and undertake to take all appropriate political measures without delay, which aim is to eliminate all forms of racial discrimination and to facilitate agreement and understanding among all races, and to achieve this:

- Each State Party undertakes not to take any action or behavior of racial discrimination against individuals or groups or institutions and ensure that all government officials and institutions, whether national or local, comply with it.
- Each State Party undertakes not to endorse, defend or accept any form of

¹³ Article 9

¹⁴ Articles 11 to 13

¹⁵ Article 14

¹⁶ Article 15

¹⁷ Banton, 1994, p. 475

¹⁸ Discrimination based on race, nationality, ethnicity , 21 December 1965

racial discrimination adopted by any individual or organization.

- Each State Party has the responsibility to take adequate measures to amend, repeal or repeal national, local, and regional policies and regulations that give rise to racial discrimination.
- Each State Party is obliged to prohibit and end all forms of racial discrimination by individuals, groups, or organizations by all appropriate means, including, if necessary, through legislative measures.
- Each State Party undertakes to encourage pro-racial and non-racial organizations and movements to eliminate inter-racial barriers and to prevent the incitement of any action that reinforces racial segregation.

Therefore, if necessary in the social, economic, cultural, etc., member states shall take unique and specific measures to ensure the desired growth and development of certain racial groups or their affiliates and support these groups and individuals. These measures are intended to ensure the full enjoyment of human rights and fundamental freedoms on equal terms but should not, after achieving this goal, lead to the preservation of unequal and distinct rights for racial groups. States Parties, therefore, undertake to prohibit and

eradicate racial discrimination in all its forms under the fundamental obligations laid down in Article 2 of the Convention, and guarantee the right of every individual to equality before the law, and in particular to the enjoyment of the following rights, without distinction as to race, colour, nationality or ethnicity.

- The right to have equal treatment before the courts and other authorities responsible for the administration of justice.
- The right to have personal security or the government's protection against aggression and sexual assault by government officials or any individual, group or organization.
- Political rights, and in particular the right to participate in elections, to vote and to stand for election on the basis of a system of universal and equal suffrage, and the right to participate in government and public administration.
- Other civil rights in particular:
 1. The right to travel and to choose a place of residence within a country
 2. The right to leave any country, including leaving one's homeland and returning to it
 3. The right to have a nationality
 4. The right to marry and to choose your spouse
 5. The right of ownership, both individually and in the form of partnership
 6. Inheritance rights

7. The right to have freedom of thought, conscience, and religion
 8. Freedom of have freedom of opinion and expression
 9. The right to have freedom of association and the formation of peaceful communities
- Economic, social, cultural, and cultural law, in particular:
 1. The right to work, to choose a job freely and to enjoy satisfactory conditions of work and to enjoy protection against unemployment, and to receive equal pay for equal work and fair and adequate remuneration
 2. The right to form and join trade unions
 3. Right to housing
 4. The right to use public health and medical care and social insurance and social services
 5. The right to education and professional training
 6. The right to participate in cultural activities on equal terms
 - The right of access to all public services facilities, such as vehicles, hotels, restaurants, cafes, theaters, and parks. (3)

10. Apartheid or Racial segregation

Apartheid is a word in the South African language meaning "separation." Since 1948 in South Africa, the official policy of separating the homes, gathering and educating dark and black people from whites, and depriving blacks of their political rights and educational facilities under apartheid was formally implemented. Apartheid is one of the brutal forms of racial discrimination perpetrated by the South African regime against blacks in favor of the country's white and racist minority (primarily descendants of European immigrants). Under apartheid, non-white races were forced by the government to separate their places of residence, education, gathering, and work from white people. Non-whites were degraded as a lowly race, deprived of a range of political and civil rights, and paid less economically than whites.

Since the mid-seventeenth century, strict racist policies against South Africa's non-white majority have been around, and in 1948, with the rise to power of the "National Party" affiliated regime, it was legalized as apartheid. Since 1953, every kind of non-white marriage with white people and confrontation with apartheid and racial discrimination and white supremacy over non-white people was reorganized. The intense repression of blacks became more widespread and organized than before. Throughout the authoritarian rule of the modernist regime in South Africa, the United States and the Zionist regime (Israel) were prominent supporters.

The end of apartheid was finally officially announced on June 30, 1991, following widespread struggles by non-whites and other

oppressed peoples and some governments opposed to U.S. imperialism. Nelson Mandela, leader of the African National Congress, won a presidential election in 1994 after years of fighting against apartheid and long prison terms, ending a brutal apartheid era. However, Mandela and the A.N.C. failed to bring real liberation to the African people because they remained dominated by ideological celebrities. It should be noted that apartheid is the only one of the types of racial discrimination globally.

Hence, the international community has sought to combat such inhumane phenomena and has always sought to establish human rights. According to the International Convention on the Elimination of All Forms of Racial Discrimination, States Parties condemn and discriminate against racial segregation and practices and prohibit and limit such practices in all territories within their jurisdiction.

11. Dealing with racist propaganda and organizations

States Parties shall condemn encouraging any form of propaganda or organization based on the views or theories of the superiority of a particular race or group of persons of a specific colour or ethnic origin. Undertake to take immediate steps to eradicate such incitement or discrimination and, in general, eliminate all forms of racial discrimination. In this way, they should pay attention to the principles of the Universal Declaration of Human Rights as well as the law set out in Article 5 of this Convention.

The Member States undertake in particular that:

- Disseminates any thoughts based on racial superiority or hatred and incitement to racial discrimination, as well as acts of coercion or provocation to force against any race of a different colour or ethnicity, as well as any contribution to activities of racial discrimination, which are legally punishable by criminal offences.
- Organizations and propaganda activities and any other type of propaganda activities that have been motivated by racial propaganda, and declare membership in such organizations to be legally punishable offences.
- To responsible authorities or public institutions; Do not allow national or local discrimination to be encouraged

12. Qatar's case against the U.A.E. before the International Court of Justice¹⁹

(According to the Convention on the Elimination of All Forms of Racial Discrimination)

Qatar claims in its petition to the International Court of Justice that the U.A.E. has violated some provisions of the Convention on the

¹⁹ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. UAE), Application Instituting Proceedings (June 11, 2018),

Elimination of All Forms of Discrimination against Women as a result of extensive measures since the U.A.E. Declaration on 5 June 2017. These actions were aimed at Qatari citizens, residents, and tourists in the U.A.E. and companies working in media (Vote on the preliminary objections to Qatar's lawsuit against the U.A.E., paragraphs 26-30). Qatar sought to review the economic measures imposed by the U.A.E. on the W.T.O., which are currently pending, and Qatar Airways also claimed arbitration of the investment agreement against the U.A.E. The International Court of Justice issued an interim injunction on July 23, 2018, which by a majority of judges consisting of then-President Judge Yusuf, Vice-President Xue, Judges Abraham, Bennouna, Cançado Trindade, Sebutinde, Robinson, and Special Judge Daudet, they ordered the U.A.E. by eight votes to 7 ensure that:

1. Families that are members of Qatar and separated by the measures taken by the U.A.E. on June 5, 2017, should be reunited.
2. Qatari students affected by the measures taken by the U.A.E. on 5 June 2017 will be given the opportunity to complete their studies in the U.A.E. or if they wish to continue their studies elsewhere, have the chance to obtain their certificate from U.A.E. universities
3. "Qatari citizens affected by the measures taken by the U.A.E. on 5 June 2017 are allowed to access the courts and other judicial institutions of the U.A.E."

The U.A.E. raised two preliminary objections to the Qatari petition. First, the U.A.E. claimed that the Court lacked jurisdiction over the dispute; because the alleged actions are not within the scope of the Convention on the Elimination of All Forms of Racial Discrimination. Second, the U.A.E. claimed that Qatar had not provided the formal preconditions set out in Article 22 of the Convention on the Elimination of All Forms of Racial Discrimination²⁰. The Court accepted the first preliminary objection and did not consider it necessary to consider the second preliminary objection²¹.

The Court categorized Qatar's genuine claims into three allegations of racial discrimination:

- Allegations of racial discrimination resulting from travel bans imposed by the U.A.E. and deportation orders that explicitly refer to Qatari nationals
- Allegations of racial discrimination stemming from restrictions on Qatari media companies
- The actions of the U.A.E. that lead to indirect discrimination based on the national origin of the Qataris²².

To determine the scope of the Convention on the Elimination of Racial Discrimination, the Court analyzed a combination of legal and substantive issues in relation to each of these allegations. Regarding the first claim

²⁰ ruling on the preliminary objections in Qatar's lawsuit against the UAE, para. 38

²¹ ruling on the preliminary objections in Qatar's lawsuit against the United Arab Emirates, paragraph 114

²² Opinion on the preliminary objections to the Qatari lawsuit against the UAE, paragraphs 56 and 70

concerning travel bans and deportation orders for current Qatari nationals, the Court interpreted the term "national origin" based on Article 1 of the Convention on the Elimination of All Forms of Racial Discrimination.

"In this Convention, the term 'racial discrimination' means any distinction, exclusion, restriction or preference based on race, color, ethnicity, or national or ethnic origin which has the purpose or effect of destroying or distorting the recognition, enjoyment, or exercise of human rights and fundamental freedoms on an equal footing in the political, economic, social, cultural or other area of public life."

In the light of the subject matter and purpose of the Convention on the Elimination of All Forms of Racial Discrimination, the Court made a text-based interpretation of the above-mentioned provision and accepted the U.A.E.'s claim that the word "origin" indicates a person's connection to an ethnic or national group at birth while citizenship is a legal feature and is considered a government authority that can change throughout a person's life... The Court notes that the other elements of the concept of racial discrimination set out in Article 1, namely race, color and ethnicity, are also inherent characteristics of birth²³.

Surprisingly, the new majority of judges, the 11 judges in Qatar's lawsuit against the U.A.E., including Vice President Xue and

Judges Tomka, Abraham, Bennouna, Donoghue, Gaja, Crawford Gevorgian, Salam and Special Judges Cot and Daudet, have made such a sharp distinction. Whereby the application and implementation of the Convention on the Elimination of All Forms of Racial Discrimination have mainly been reduced solely on the basis of inherent birth characteristics and in the jurisdictional stage without the possibility of receiving scientific evidence and facts, and by the decision of the majority of the Court, their evaluation could be reserved for the substantive review stage.

The rest of the Court's interpretation of the term "national origin" rejects the current or actual nationality of persons as a basis for prohibited discrimination under the Convention on the Elimination of All Forms of Racial Discrimination, it deals with its interpretations of paragraphs 2 and 3 of Article 1 of the Convention on the Elimination of All Forms of Racial Discrimination, two threshold provisions which make the Convention inapplicable to a particular subject:

2. The Convention shall not apply to distinctions, exceptions, restrictions or preferences made by States Parties to nationals and non-citizens;
3. Nothing in this Convention shall be construed to affect the legal provisions of States Parties concerning nationality, nationality, or acquired nationality unless such conditions provide for particular discrimination against a specific nationality. "

²³ ruling on the preliminary objections in Qatar's lawsuit against the United Arab Emirates, para.

The majority of the Court examined the provisions relating to the non-applicability of the Convention on the Elimination of All Forms of Racial Discrimination as part of the interpretation of the concept of "national origin" in the concept of racial discrimination. Instead of reserving the issue at the substantive hearing, the Court described the rules as "interpreting the common meaning of the term 'national origin' in support of the inclusion of the current nationality in the term. In the Court's view, such an explicit exception to the Convention's distinction between citizens and non-citizens shows that the Convention does not preclude measures taken by States Parties to restrict the right of non-citizens to enter and reside in a country, and these are precisely the rights on which the parties disagree"²⁴. Qatar referred to the terms of its petition, which included not only travel bans and deportation orders (which the Court categorized as the first category of racial discrimination), but also a complete set of cases of non-recognition, enjoyment, and equal exercise of human rights:

- (A) The mass deportation of all Qatari nationals from the United Arab Emirates, and the ban on their entry into the United Arab Emirates on the basis of their national origin;
- (B) Violation of other fundamental rights, including the right to marry and to choose a spouse, freedom of opinion and expression, public health and medical care, education, property rights, work, participation in social

activities, and equal treatment before the courts;

- (C) Failure to condemn and encourage racial hatred against Qatar and Qatari nationals and inability to take action aimed at combating discrimination and discriminatory judgments, including criminalization of sympathy with Qatar and Qatari nationals; permission, promotion, and financial support of international anti-Qatari public and social media campaign; restrictions on Qatari media; And calling for material attacks on Qatari institutions
- (D) Failure to provide adequate protection and redress for Qatari nationals to compensate for discriminatory acts through the courts and institutions of the United Arab Emirates.

Generally, it was strange that the majority of the Court in the Qatari lawsuit against the United Arab Emirates analyzed the text of paragraphs 2 and 3 of Article 1; this vote does not discuss the totality of the actions that Qatar claimed in its petition as racial discrimination against Qatari nationals. It is also controversial to reduce allegations of racial discrimination against Qatari nationals to travel bans and deportation orders, while in the 2018 interim injunction, the Court referred to family rights, educational rights, and access to justice in court cases.

Finally, the majority of the Court again concluded, without reference to scientific or factual findings, that the preamble to the Convention on the Elimination of All Forms

²⁴ Opinion on Qatar's Preliminary Objections to the UAE's Paragraph 83

of Racial Discrimination clearly stated its purpose and subject matter; to end all practices that seek to establish a hierarchy between social groups defined by their inherent characteristics or that impose a system of racial segregation. Therefore, the purpose of the Convention is to eliminate all forms and manifestations of racial discrimination against humanity based on natural and visible characteristics of their origin²⁵. However, nothing in the text of the preamble to the Convention on the Elimination of All Forms of Racial Discrimination refers to "inherent characteristics at birth." Paragraph 5 of the Introduction to the Convention on the Elimination of All Forms of Racial Discrimination explicitly states the need to eliminate all forms and manifestations of racial discrimination around the world and ensure an understanding and respect for human dignity. By narrowing the protections of the Convention on the Elimination of All Forms of Discrimination against Women, only what the Court considers to be "inherent traits", The Court's ruling on the preliminary objections in Qatar's lawsuit against the U.A.E. has silenced the question of how the Convention can continue to pursue its goal of rapidly eliminating all forms and manifestations of racial discrimination around the world. The Court also described (indirectly) the actions of the U.A.E. as merely "based on the distinction between persons on the basis of their nationality"²⁶,

(Surprisingly and without further explanation of his argument) immediately went to the resolution of legal issues, the issues that had to be addressed to the substantive stage²⁷.

13.The role of the Committee on the Elimination of Racial Discrimination in the above case:

In the dispute between Qatar and the U.A.E., the Qatari government was concerned that the rights of Qataris living in the U.A.E. would be jeopardized due to their deprivation of rights and coercive measures against them, as well as the closure of air and land borders on them, which would lead to deprivation of education, housing, and business in the U.A.E. Considering their national origin, he filed a lawsuit against the issue that arises is that Qatar and the U.A.E. have similar social, historical, and cultural characteristics and are close to each other, and claims of racial discrimination and difference due to racial discrimination jeopardize this concept.

In the first stage, the Committee will proceed with its competence to review the case, and after accepting its competence, it will comment on the nature of the dispute. In this case, the U.A.E. claims that the Committee's incompetence to hear the case and also that there has been no violation of the Convention under Article 11. The U.A.E. claims that the ongoing incidents do not violate the Convention and that the Qatari government's interpretation of the discriminatory action is wrong. However, the actions taken by the

²⁵ Vote on the Preliminary Objections in Qatar's lawsuit against the United Arab Emirates, paragraph 86

²⁶ ruling on the preliminary objections in the case of Qatar v. United Arab Emirates, para. 87

²⁷ Shafi'i, Zohreh (2022)

U.A.E. government have been a clear example of discrimination based on race and ethnicity to Qatar, and what the U.A.E. claims is the procedure as well as the broad definition and interpretation of the articles of the Convention on the Elimination of Racial Discrimination.

Consequently, following the Committee's procedure, after inviting the parties to compromise to call for compromise, while approving the Committee's bylaws, under Article 11 of the Convention, the U.A.E. declared acts of racial discrimination.

Conclusion

Given the rapid changes in the international community, especially in terms of technology, the alignment of laws and regulations in the international arena is evident and necessary, since any neglect or lack of attention to them can create crises in different parts of the world, and sometimes these crises get out of control due to the interconnectedness of the international community. The example of a global village may be plausible today, but countries still face terms such as radical nationalism or radical religious tendencies that have the potential to create massive crises across borders (Like what we see today between Russia and Ukraine). It is, therefore, the duty of the international community to use all its capacities to prevent all forms of racial discrimination, whether in the legal capacity of the International Court of Justice or the

political power of the Committee against Racism. In the case of Qatar's complaint against the U.A.E., the Committee rightly used this capacity to pave the way for the use of political tools to control the crisis. Perhaps this Committee can play an influential role in similar cases such as the crisis between Russia and Ukraine, taking into account the history, culture, and race of these countries and taking action to resolve the issue legally.

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