

Distr.: General
15 April 2021
Arabic
Original: English

الجمعية العامة



مجلس حقوق الإنسان

الدورة السابعة والأربعون

21 حزيران/يونيه - 9 تموز/يوليه 2021

البند 3 من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية

والاجتماعية والثقافية، بما في ذلك الحق في التنمية

مذكرة شفوية مؤرخة 6 نيسان/أبريل 2021 موجهة من البعثة الدائمة للإمارات العربية المتحدة لدى مكتب الأمم المتحدة في جنيف إلى رئيس مجلس حقوق الإنسان

تود البعثة الدائمة للإمارات العربية المتحدة لدى مكتب الأمم المتحدة والمنظمات الدولية الأخرى في جنيف أن تحيل طيه الرسالة المرفقة الموجهة إلى رئيس المجلس (انظر المرفق).

وستكون البعثة الدائمة ممتنة إذا عُمِّت هذه المذكرة الشفوية ومرفقها* باعتبارهما وثيقة من وثائق مجلس حقوق الإنسان، في إطار البند 3 من جدول الأعمال.

* استُنسخ المرفق كما ورد، وباللغة التي قُدم بها فقط.



Annex to the note verbale dated 6 April 2021 from the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva addressed to the Office of the President of the Human Rights Council.

Letter from H.E. Mr. Ahmed Aljarman, Permanent Representative of the United Arab Emirates to the United Nations Office at Geneva addressed to the President of the Human Rights Council

I write concerning the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights (“Special Rapporteur”) and refer to the attention of that mandate to the past severance of relations with the State of Qatar by the Government of the United Arab Emirates (“UAE”) and other Member States from June 2017 to January 2021.

As you will be aware, resulting from Qatar’s invitation to the Special Rapporteur to visit Doha in November 2020, the Special Rapporteur published on 12 November 2020 preliminary findings concerning Qatar’s human rights allegations against the UAE and other Member States (“Preliminary findings”). In this regard, the UAE was party to a written communication dated 4 January 2021 to the President of the UN Human Rights Council, jointly with the Arab Republic of Egypt, the Kingdom of Bahrain and the Kingdom of Saudi Arabia, raising concerns about the Special Rapporteur’s work and findings.

The UAE’s further study of the Special Rapporteur’s findings has reinforced its reservations about the scope, methodology and balance of the Special Rapporteur’s work on this matter. In summary, and as reflected in the detailed Annex to this note, the concerns with the Special Rapporteur’s findings on the UAE’s measures include that:

- (a) The measures are not unilateral coercive measures that adversely impacted on the enjoyment of human rights;
- (b) The conclusion that the measures lacked international legal basis is outside the scope of the mandate, and in any case unjustified;
- (c) The findings make factual assessments and determinations beyond the scope of the Special Rapporteur’s mandate;
- (d) The findings ignore key facts that are incontrovertible;
- (e) The findings endorse uncritically Qatar’s claims and do not even consider the UAE’s account;
- (f) The measures did not have the effect on human rights that the Special Rapporteur claims.

Moreover, and as welcomed by the Qatar National Human Rights Committee, the parties have since concluded the Al Ula Declaration on 5 January 2021 to resolve their differences.¹ As a result, all the UAE’s measures against Qatari nationals have been lifted now, restoring the position of Qatari nationals to the exact state prior to the UAE’s severance of relations with Qatar in 2017.

In addition to the conclusion of the Al Ula Declaration, the International Court of Justice (“ICJ”) on 4 February 2021 handed down its judgment concerning the claims of discrimination brought by Qatar against the UAE under the Convention on the Elimination of Racial Discrimination (“CERD”). The Court dismissed Qatar’s claims as not even being capable of constituting discrimination, either direct or indirect, under the Convention. The Court held that the UAE’s immigration and other measures were addressed to Qatari

¹ NHRC Statement N. 01/2021, available at <https://nhrc-qa.org/en/nhrc-statement-no-01-2021-concerning-the-al-ula-declaration-and-agreement-signed-in-the-41st-session-of-the-supreme-council-of-the-cooperation-council-for-the-arab-states-of-the-gulf-and-the-announ/>.

nationals, and further that “*differentiation on the basis of nationality is common and is reflected in the legislation of most States*”.²

From the outset, the UAE has considered that the Special Rapporteur’s focus on the UAE’s severance of relations with Qatar was neither justified nor appropriate. As a consequence of the Al Ula Declaration, there is unequivocally no justification for the Special Rapporteur mandate to continue focussing on the UAE and its treatment of Qatari nationals. There is no need for a substantial further Special Rapporteur’s report on the matter, nor an associated debate in the UN Human Rights Council.³

To continue focussing on measures that are now historic and on claims which have been rejected by the ICJ, is not the best use of limited UN resources and time, which are better used for important and contemporary human rights concerns. It would signal a largely political rather than human rights motivation to the mandate and its work. Furthermore, while the UAE was counted amongst the original supporters of this Special Procedure, it is concerned that a flawed execution of the Special Rapporteur’s mandate serves only to reinforce the criticisms and concerns raised by a significant number of Member States during the mandate’s establishment.

(Signed) Ahmed Aljarman
Ambassador, Permanent Representative,
United Arab Emirates

² Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Judgment of the International Court of Justice of 4 February 2020, paragraph 87.

³ A Statement by the Special Rapporteur on 12 November 2020 indicates that she plan to present her full report on the mission in September 2021. The Statement is available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26499&LangID=E>

Attachment

Detailed Analysis of Preliminary Findings of Special Rapporteur for Coercive Unilateral Measures against the UAE

A. The Special Rapporteur's findings exceed the mandate

1. The UAE notes that the Special Rapporteur's preliminary findings exceed the mandate provided to her role by the UN Human Rights Council resolutions 27/21 and 45/5.¹ As a consequence, the Special Rapporteur is acting contrary to duties under the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council ("Code of Conduct").²
2. In this regard, the UAE notes particularly that: (a) the measures adopted by the UAE are not unilateral coercive measures, and in some cases, are irrelevant to the enjoyment of human rights; (b) the conclusion there is no international legal basis for the measures is both unjustified, and a matter for the judicial bodies seized to decide upon; and (c) there are findings made on other factual matters which are outside the mandate.

The measures are not unilateral coercive measures, and do not have a connection with the enjoyment of human rights

3. The Special Rapporteur's findings address measures that do not constitute 'unilateral coercive measures'. On 5 June 2017 the UAE severed relations with Qatar. Several other Member States also severed or downgraded relations with Qatar. These include Bahrain, Chad, Comoros, Djibouti, Egypt, Jordan, the Maldives, Mauritania, Niger, Saudi Arabia, Senegal, and Yemen. The UAE's severance of relations with Qatar withdrew certain privileges associated to close friendship in international relations.
4. The UAE accepts its severance of relations had an impact on Qatari nationals. For example, while Qatari nationals were previously able to travel to Qatar without a visa, after 5 June 2017 the UAE conditioned entry to obtaining a visa. However, these are not "unilateral coercive measures". They are common and acceptable procedures adopted in the exercise of national sovereignty in respect of immigration and border controls.
5. The International Court of Justice ("ICJ") in its decision in the CERD case brought by Qatar against the UAE indicated that the Convention "*does not prevent States parties from adopting measures that restrict the right of non-citizens to enter a State and their right to reside there ... on the basis of their current nationality*".³ Accordingly, the UAE's differential treatment of Qatari nationals was not discrimination under the Convention.
6. In addition, no measure adopted by the UAE aimed to secure "the subordination of the exercise of ... sovereign rights" by the State of Qatar, as would be necessary to constitute 'unilateral coercive measures'.⁴ The UAE has consistently explained that its measures were adopted in the context of legitimate security concerns and pursuant to enabling provisions, both under customary international law and treaty law. This includes the legal framework of

¹ The mandate of the Special Rapporteur is governed by Resolutions 27/21 and 45/5. The Preliminary findings are available at:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26495&LangID=E>.

² Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council, Human Rights Council 5/2. Articles 3(d) and 7 provide the mandate holder must "focus exclusively on the implementation of [the] mandate" and "exercise [...] functions in strict observance of [the] mandate".

³ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Judgment of the International Court of Justice of 4 February 2020, paragraph 83.

⁴ Human Rights Council Resolution 27/21, Human rights and unilateral coercive measures.

three treaties concluded to manage this dispute, called the Riyadh Agreements.⁵ Such a course of action does not constitute unilateral coercive measure.

7. The Special Rapporteur has recognized in her first thematic report submitted to the UN Human Rights Council on 21 July 2020 (the “First Thematic Report”) that “*not every unfriendly act or means of applying pressure by a State can be qualified as a unilateral coercive measure*”.⁶ It is also relevant that the UN Security Council has not deemed it necessary to address any of the measures which Member States, including the UAE, adopted in respect of Qatar.

8. Lastly, the Special Rapporteur’s findings refer to actions for which it is at times difficult to establish any connection with human rights. For example, the closure of UAE airspace to Qatar-registered aircraft did not have any impact on the human rights of Qatari citizens, as is implied by the Special Rapporteur.⁷ There simply is no evidence of a “blockade”, whether legally or factually, as enforced against Qatar. The UAE’s measures only regulated the presence of Qatari-registered aircraft in the UAE’s own sovereign airspace.

The conclusion that the measures lack international legal basis is outside the scope of the mandate, and in any case unjustified

9. The Special Rapporteur has confirmed that lawful countermeasures will not constitute unilateral coercive measures.⁸ However, she goes on to find that the UAE and other Member States have not taken lawful countermeasures against Qatar.⁹ This assessment is both beyond the expertise and appropriate role of the Special Rapporteur’s mandate, and also unjustified.

10. The UAE and Qatar have litigated this issue before a number of international tribunals. The UAE has articulated in multiple fora, including before the ICJ, the legal basis and the justification for its measures. Not one judicial body has decided that the measures adopted by the UAE “lack legal basis” or cannot be justified as countermeasures or under treaty law. It is inappropriate for the Special Rapporteur to substitute her judgment for that of the ICJ, the WTO Panel, or other tribunals that have addressed the dispute between the Parties, which have the mandate and expertise, in considering the question of the international legality of the UAE’s measures.

11. In this regard, the Special Rapporteur has commended Qatar’s attempts “*to appeal to the competent international organs, including (...) the World Trade Organization*”.¹⁰ Furthermore, she has previously indicated her intention to “*engage with the World Trade Organization (WTO) to assess developments regarding Article XXI of the General Agreement on Tariffs and Trade, which authorizes contracting parties to impose sanctions that would otherwise violate the terms of the Agreement if there is a national security reason or some other “emergency in international relations”*”.¹¹ This, however, appears to be the opposite of what the Special Rapporteur has done in practice in this dispute.

⁵ First Riyadh Agreement, 23 – 14 November 2013; Second Riyadh Agreement, 17 April 2014; Third Riyadh Agreement, 16 November 2014.

⁶ Negative impact of unilateral coercive measures: priorities and road map, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, 21 July 2020, A/HRC/45/7, para 27.

⁷ Preliminary findings: “The Four States have banned aircraft registered in Qatar – thus effectively banning the national airline, Qatar Airways – from landing in their territory or transiting through their airspace since June 2017”.

⁸ Preliminary findings: “illegality [of unilateral measures] is excluded in the course of countermeasures taken in accordance with the standards of international responsibility, with the purpose to restore observance of international obligations”.

⁹ Preliminary findings: There is “a lack of evidence for legitimizing the imposition of unilateral sanctions as countermeasures” and that the measures therefore “lack legal basis”.

¹⁰ Preliminary findings.

¹¹ Negative impact of unilateral coercive measures: priorities and road map, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, 21 July 2020, A/HRC/45/7, para 77.

12. In fact, the WTO Panel in the Qatar and Saudi Arabia dispute already decided that the security exception of Article XXI of the GATT applied, given the state of emergency in international relations between the two Member States.¹² The WTO Panel's only finding of responsibility by Saudi Arabia related to its lack of criminal legislation to combat misuse of intellectual property.¹³ The Special Rapporteur has taken no note of this WTO Panel decision, which was published on 16 June 2020,¹⁴ well before her visit to Qatar. In this regard, the UAE has been involved also in a WTO dispute with Qatar and has received the Panel's Interim Report, which it would be comfortable to share with the Special Rapporteur, subject to Qatar's agreement.

The Special Rapporteur's findings make factual assessments and determinations beyond the scope of her mandate

13. The UAE observes that a number of the Special Rapporteur's comments and assessments serve to simply advance Qatar's assertions and allegations on topics with no bearing on her mandate, which is limited to unilateral coercive measures. The Special Rapporteur's assessments also concern issues for which there are different views and contrary information from other UN bodies and other international organizations.

14. For example, it is unclear why the Special Rapporteur felt it necessary, in the impartial exercise of her mandate, to take additional steps and commend the *"generally reported efforts Qatar is taking to implement international human rights standards"* and that *"Qatar is well-known for setting examples pioneering the promotion of freedom of expression in the region"*.¹⁵ While acknowledging she was unable to take a view on the political dispute between Qatar and other Member States, the Special Rapporteur made a point to *"welcome recent progress of Qatar in improving its domestic legislation and practice in countering terrorism"*.¹⁶ This is precisely the subject matter of the political dispute.

B. The Special Rapporteur's findings are inaccurate and endorse uncritically Qatar's claims

15. The Special Rapporteur's findings also portray key facts in an inaccurate and uncritical manner. The UAE notes particularly that Special Rapporteur has both: (a) ignored facts that are uncontested; and (b) in the case of disputed facts, endorsed uncritically Qatar's claims, without even considering the UAE's perspective and explanation.

16. This is despite the UAE having provided on multiple occasions detailed evidence and information that refutes the allegations, for example, to the ICJ and in correspondence addressed to the President of the UN Human Rights Council and the UN High Commissioner for Human Rights.¹⁷ This inaccurate and uncritical presentation of facts is contrary to the provisions in the Code of Conduct.¹⁸

¹² Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights, Report of the Panel, 16 June 2020, WT/DS567/R, para 7.294.

¹³ Ibid.

¹⁴ The report is available at the website https://www.wto.org/english/news_e/news20_e/567r_e.htm.

¹⁵ Preliminary findings.

¹⁶ Preliminary findings.

¹⁷ Written and Oral Pleadings of the UAE are publicly available on the website of the International Court of Justice, in cases Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Judgment of the International Court of Justice of 4 February 2020; Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar) and Appeal Relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt and United Arab Emirates v. Qatar).].

¹⁸ The duties to act with professionalism, competence and impartiality and to behave "in such a way as to maintain and reinforce the trust [...] of all stakeholders", under Article 3; the duty to "always seek to establish the facts, based on objective, reliable information emanating from relevant credible

The Special Rapporteur's findings ignore key facts that are incontrovertible

17. The Special Rapporteur's findings are inconsistent with incontrovertible facts in the public domain, which cannot simply be ignored.

18. The Special Rapporteur, for example, finds that: *"In June 2017, the Four States also suspended postal services with Qatar"*.¹⁹ The Special Rapporteur implies that this state of affairs was still extant in November 2020, and that the measures *"remained in place"* at the time of the Special Rapporteur's visit to the Qatar. This is plainly incorrect. Postal relations between the UAE and Qatar had resumed nine months before the Special Rapporteur's visit, in accordance with a solution brokered by the Universal Postal Union in February 2020. This was widely publicized, both at the UN level and on international media.²⁰ It is uncontested that Qatari citizens were able to exchange postal items with the UAE at the date of the visit to Doha by the Special Rapporteur.

19. The UAE is also disappointed that, after the Al Ula Declaration of 5 January 2021, the Special Rapporteur issued a statement recording that one of four Member States had lifted measures in respect of Qatar,²¹ but has failed to acknowledge that all four Member States have lifted measures pursuant to the terms of the Al Ula Declaration.

The Special Rapporteur's findings endorse uncritically Qatar's claims and do not even consider the UAE's account

20. In respect of facts that are contested between the Parties, the Special Rapporteur's findings adopt uncritically the claims made by Qatar, including during her visit to Doha.

21. For instance, the Special Rapporteur indicates that "the Four States implemented a series of concerted unilateral measures against Qatar, including ... expelling almost 3000 Qataris from their territories" and she criticizes "forced departures" of Qatari nationals.²² Expulsions are presented as an incontrovertible fact. However, as the UAE has explained in a number of circumstances, including before the ICJ in the CERD case, it never implemented any expulsion or deportation order in respect of Qatari nationals. In fact, many Qatari nationals continued to reside in the UAE after 5 June 2017. The UAE position is not even recorded, let alone discussed, in the Special Rapporteur's findings.

22. Further, the Special Rapporteur references at least five times the establishment of an alleged UAE law criminalizing expressions of sympathy towards Qatar and its nationals. This, too, is plainly incorrect. The UAE's explanation that no such law actually exists is not reported once. As the UAE has consistently explained, including to the ICJ, the law that Qatar complained of is actually a cyber-crime law of general application, enacted five years before the UAE terminated relations with Qatar. It is incontrovertible that the law does even mention Qatar or Qatari nationals at all, let alone target them. The law is similar to general cyber-crime laws in many other countries, including Qatar's 2014 cyber-crime law.²³

23. Despite this fact, that the UAE's law does not criminalize expressions of sympathy towards Qatar and its nationals, the Special Rapporteur still makes sweeping conclusions in respect of the UAE based primarily on that erroneous finding. The Special Rapporteur states:

sources, that (...) have [been] duly cross-checked to the best extent possible; and the duty to "take into account in a comprehensive and timely manner, in particular information provided by the State concerned on situations relevant to their mandate", under Article 6.

¹⁹ Preliminary findings.

²⁰ UPU announces resumption of international postal exchanges between Qatar and the following countries: Bahrain, Egypt, Saudi Arabia and the UAE, 25.02.2020, available at <https://www.upu.int/en/Press-Release/2020/2/Statement-by-the-Director-General-of-the-Universal-Postal-Union>; Reuters, UAE restores postal service to Qatar despite protracted dispute, 10.02.2020, available at <https://www.reuters.com/article/gulf-qatar-emirates/uae-restores-postal-service-to-qatar-despite-protracted-dispute-idINKBN2041JL>.

²¹ UN human rights expert welcomes Saudi Arabia's action in lifting sanctions against Qatar, 07.01.2021, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26642&LangID=E>.

²² Preliminary findings.

²³ UAE Federal Decree Law No. 5 of 2012.

*The reported and well-documented anti-Qatari incitement campaigns in the media of the Four States also violate the rights to freedom of expression, as well as obligations to take all necessary measures to prevent and prosecute incitement to racial discrimination.*²⁴

24. The ICJ took the completely opposite view to that of Qatar and the Special Rapporteur, as its judgment in the CERD case reflect the conclusion that the UAE's action were simply incapable of being construed as discrimination under the Convention.

C. The measures did not have the effect on human rights that the Special Rapporteur claims

25. The UAE has consistently rejected that its measures have impaired fundamental human rights of Qatari nationals, as alleged by the Special Rapporteur, let alone that they may amount *"to a pattern of persistent and systematic human rights violations"*.²⁵ These findings do not stand up to scrutiny. The very grave accusations that the UAE has breached obligations concerning prohibition of discrimination under the CERD Convention were soundly rejected by the ICJ's judgment of February 2021.

26. The UAE has already publicly stated, honestly and transparently, that there were certain shortcomings in the implementation of measures in the immediate aftermath of the severance of relations.²⁶ The UAE has explained that it promptly took action to address these and minimize the impact on Qatari citizens. While the Special Rapporteur's findings noted these efforts, they have also understated and undermined their significance.

27. The mitigation efforts were substantive, for example, and meant that Qatari citizens were able to continue to travel to and reside in the UAE, contrary to what the Special Rapporteur finds. As the UAE has demonstrated before the ICJ, *"the number of Qatari citizens residing in or visiting the UAE was not substantially different than the number of Qatari citizens who were present in the country prior to June 2017"*.²⁷ The UAE's efforts permitted Qatari citizens to continue to operate their business in the UAE, to receive medical treatment, and ensured that students could continue their university studies in the UAE.²⁸

28. The Special Rapporteur did not provide a careful and balanced assessment of all parties' efforts, but rather promoted Qatar's claims by commending *"all steps taken by Qatar's Government to mitigate the negative consequences of the sanctions applied on the people living in Qatar"*.²⁹ This was done despite incontrovertible and contrary facts, such as Qatar's admission before the ICJ that it had deliberately blocked its own citizens' access to the UAE website established to permit Qatari nationals to apply for their visa entry to the UAE.³⁰

D. The Special Rapporteur's recommendations are based on an incorrect assessment, and in any event are unnecessary

29. The recommendations in the Special Rapporteur's findings, and in her press release of 7 January 2021, rest on the incorrect assessments identified above. In any event, they are unnecessary, both in the light of the Al Ula Declaration, and considering the mechanisms and processes that were in place between the parties to address any human rights concern.

²⁴ Preliminary findings.

²⁵ Preliminary findings.

²⁶ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Verbatim record 2020/6, Public sitting held on Monday 31 August 2020, at 3 p.m., page 19, para 11 – 12.

²⁷ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary objections of the UAE, 29 April 2019, para 44.

²⁸ Ibid, paras 49 ff.

²⁹ Preliminary findings.

³⁰ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Verbatim record 2019/5 Public sitting held on Tuesday 7 May 2019, at 10 a.m. page 26, para 40.

30. All UAE measures adopted in respect of Qatari nationals have now been lifted. The status of Qatari nationals in the UAE has been restored to exactly what it was prior to the severance of relations in June 2017. Any follow up issues that the parties may have, potentially related to the humans right of their respective nationals, may be properly addressed bilaterally and in the context of the Al Ula Declaration.
