

12-30-2022

Protecting Corporations from Discrimination Under the Convention on the Elimination of Racial Discrimination

William Thomas Worster

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Recommended Citation

William T. Worster, *Protecting Corporations from Discrimination Under the Convention on the Elimination of Racial Discrimination*, 47 Brook. J. Int'l L. 421 (2022).

Available at: <https://brooklynworks.brooklaw.edu/bjil/vol47/iss2/2>

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PROTECTING CORPORATIONS FROM DISCRIMINATION UNDER THE CONVENTION ON THE ELIMINATION OF RACIAL DISCRIMINATION

*William Thomas Worster**

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INTRODUCTION

In 2018, the international media outlet Al Jazeera was dragged into the racial discrimination case brought by Qatar against the UAE, triggering the question of whether a corporation enjoys rights against discrimination that are protected under international law.¹ The treaty that forms the basis of this case is the Convention on the Elimination of All Forms of Racial Discrimination (CERD),² and while persons, groups of persons, and institutions receive protection under the CERD for their freedom of expression, it is not entirely clear whether a media company does.³ The International Court of Justice (ICJ) initially ruled on two requests for provisional measures, where it took an ambiguous approach to the possibility of protecting of Al Jazeera.⁴ Eventually, the ICJ determined that it did not have jurisdiction, holding that the discriminatory measures at issue were based on citizenship, not national origin, and were therefore not prohibited by the CERD.⁵ The same case was filed before the CERD Committee, which has since terminated proceedings in line with the request of the parties⁶ Thus, at this stage, whether the CERD applies to corporations remains an open question. This Article examines whether the CERD provides for rights that can be held by corporations, and whether the ICJ or CERD Committee can protect them.

This Article analyzes the two ICJ orders, the judgment dismissing the case, the jurisprudence of the CERD Committee, and comparative practice under other human rights instruments to reach a conclusion on which entities are covered by the CERD and how they can have their rights protected. This Article is not necessarily limited to media companies in its implications. Media companies are used as a case study because of the recent

1. *See generally* Application of the Int'l Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. U.A.E.), Preliminary Objections, Judgment, 2011 ICJ Reps (Feb. 4), <https://www.icj-cij.org/public/files/case-related/172/172-20210204-JUD-01-00-EN.pdf>

2. International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 12, 1969, 660 U.N.T.S. 195[hereinafter CERD].

3. *See infra* sec. III(C).

4. *See infra* sec. II(A)-(B).

5. *See infra* sec. II(C).

6. *See* Qatar v. UAE, Dec. on the req. for suspens. submitted by Qatar (Mar. 15, 2021), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/Decision_9381_E.pdf

matters concerning Al Jazeera and the right to free expression clearly included in the CERD; however, the conclusions of this Article are relevant for other corporations that might claim discrimination in exercising any of their rights under the CERD.

This Article begins with background on the dispute, then it analyzes whether the CERD applies to Al Jazeera and other media companies. First, it considers issues of admissibility. Specifically, it studies which actors have standing to make claims for violations of CERD and which actors must exhaust available domestic remedies before making such claims. Second, it examines whether a media outlet has any rights under the CERD. It tests whether Al Jazeera can qualify as a person, a group of persons, a corporation, an institution, or a government entity, and whether it would qualify as having rights under CERD if it fell in any of those categories. It concludes by offering various arguments that Al Jazeera's freedom of speech should be protected from discrimination under the CERD.

I. BACKGROUND

Qatar and the UAE, among other states in the region, have a long running political dispute that is only now showing signs of some resolution.⁷ During the most heated months of the dispute, several states, including the UAE, imposed a wide range of measures against Qatar, Qatari nationals, and corporations.⁸ Qatar, in turn, brought a number of legal claims before international courts and tribunals attempting to address these measures.⁹ This Article focuses on the *Application of the*

7. See Bel Trew & Borzou Daragahi, *Saudi ends blockade but Qatar gives up little*, THE INDEP. (Jan. 5, 2021) <https://www.independent.co.uk/news/world/middle-east/qatar-saudi-arabia-gulf-arab-b1782751.html>; **Mostafa Salem** and **Hande Atay Alam**, *Saudi Arabia and Qatar agree to reopen airspace and maritime borders*, CNN (Jan. 4, 2021) <https://edition.cnn.com/2021/01/04/world/qatar-and-saudi-arabia-reopen-air-space-intl/index.html>; Samuel Ramani, *The Qatar Blockade Is Over, but the Gulf Crisis Lives On*, FOR. POL'Y (Jan. 27, 2021) <https://foreignpolicy.com/2021/01/27/qatar-blockade-gcc-divisions-turkey-libya-palestine/>

8. See generally *Application of the Int'l Convention on the Elimination of All Forms of Racial Discrimination* (Qatar v. U.A.E.), Preliminary Objections, Judgment, 2011 ICJ Reps (Feb. 4)

9. See e.g. United Arab Emirates — Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights, Case No. WT/DS526/1, Request for Consultations (July 31, 2017), WTO Doc. G/L/1180/IP/D/35#S/L/415#WT/DS526/1 (Aug. 4, 2017); Appeal Relating to the

International Convention on the Elimination of All Forms of Racial Discrimination case¹⁰ before the ICJ, and the parallel inter-state communication by Qatar against the UAE and Saudi Arabia before the CERD Committee, and how those cases pertain to Al Jazeera and similar media companies. Specifically, the analysis is concerned with whether Al Jazeera is a person, a corporation, or a state entity and how its potential nature impacts the claims of discrimination.

One of the various measures adopted by the Emirates was the closure of the local office of Al Jazeera Media Network and the blocking of transmission and websites of that network into the UAE.¹¹ The UAE did not appear to contest the fact that it had undertaken these actions.¹² In fact, Al Jazeera has been specifically mentioned in the thirteen political demands by the UAE and other three states, demanding that Qatar “shut down Al Jazeera and its affiliate stations”.¹³ Al Jazeera does not have standing before the ICJ, so it relied on Qatar to protect its rights.¹⁴ In the other case before the CERD Committee, Al Jazeera similarly relied on Qatar to maintain an inter-state complaint, although the Committee is open to individual

Jurisdiction of the ICAO Council Under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt and UAE v Qatar), Judgment, 2020 ICJ Resp 172 (July 14).

10. *See generally* Application of the Int'l Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. U.A.E.), Provisional Measures, 2018 I.C.J. 406 (July 23), <https://www.icj-cij.org/public/files/case-related/172/172-20180723-ORD-01-00-EN.pdf> ; *see also* Application Of the Int'l Convention On the Elimination Of All Forms of Racial Discrimination (Qatar v. U.A.E.), Provisional Measures, 2019 I.C.J. 361 (June 14)

11. *See* Application of the Int'l Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. U.A.E.), Provisional Measures, ¶ 6 (June 11), <https://www.icj-cij.org/public/files/case-related/172/172-20180611-WRI-01-00-EN.pdf> [hereinafter Qatar v. U.A.E., Provisional Measures (June 11, 2018)].

12. *See id.*

13. *The 13 Demands on Qatar from Saudi Arabia, Bahrain, the UAE and Egypt*, THE NATIONAL (June 22, 2017), <https://www.thenational-news.com/world/the-13-demands-on-qatar-from-saudi-arabia-bahrain-the-uae-and-egypt-1.93329>; *see also* Interpretation & Application Of the Int'l Convention On the Elimination Of All Forms of Racial Discrimination (Qatar v. U.A.E.), Verbatim Record, at Al-Khulaifi, ¶ 6 (June 27, 2018, 10:00 a.m.), <https://www.icj-cij.org/public/files/case-related/172/172-20180627-ORA-01-00-BI.pdf> [hereinafter Qatar v. U.A.E., Verbatim Record (June 27, 2018, 10:00 a.m.)]; *id.* at Donovan, ¶ 29.

14. *See id.*

complaints.¹⁵ The ICJ ultimately dismissed the case, but not on the basis of whether a corporation enjoys rights.¹⁶ The arguments and the Court's prior orders, however, provide some hints at issues regarding the nature of Al Jazeera being a person, corporation or state entity.

A. First Request for Provisional Measures by Qatar

While the case was pending, Qatar filed an emergency request before the ICJ for interim provisional measures to ensure that it, and its nationals and entities, do not suffer any irreparable harm before the case is resolved.¹⁷ Specifically, Qatar asked the court to order the Emirates to protect the freedom of expression of Qataris in the UAE, including reversing the closure and blocking of Al Jazeera and other media outlets.¹⁸ The Court found that it had *prima facie* jurisdiction, although it did not grant the media protection measures that Qatar requested.¹⁹ Some protections were issued, but only for Qatari nationals.²⁰ In addition, the Court issued a general provisional order of non-aggravation.²¹

The order suggested that the ICJ did not view Al Jazeera as an entity deserving protection. It concluded that some of the claims were plausible, where measures "targeted only Qataris and not other non-citizens residing in the UAE. Furthermore, the measures were directed to all Qataris residing in the UAE, regardless of individual circumstances."²² But it excluded free expression from its provisional measures,²³ suggesting that while the Court acknowledged the possibility of discrimination against Qataris, it found it harder to see it as plausible that the treatment of Al Jazeera constituted prohibited discrimination.

15. See Comm. on the Elimination of Racial Discrimination, Admissibility of the Inter-State Communication Submitted by Qatar Against the U.A.E., U.N. Doc. CERD/C/99/4 (Aug. 30, 2019) [hereinafter *Admissibility of Qatar v. U.A.E.*].

16. See Application of the Int'l Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. U.A.E.), Preliminary Objections, Judgment, 2011 ICJ Reps (Feb. 4)

17. See *Qatar v. U.A.E.*, 2018 I.C.J. 406.

18. See *id.*

19. See *id.*

20. See *id.*

21. See *id.*

22. *Qatar v. U.A.E.*, 2018 I.C.J. 406, ¶ 54.

23. See *id.* at ¶ 79.

Because it recognized that Qataris might be a protected group, and that individuals would be covered by any of the terms of the CERD, the exclusion of Al Jazeera may have been due to its corporate form.

B. Second Request for Provisional Measures by UAE

One year later, the UAE requested its own provisional measures.²⁴ In its request, among several other grounds, the UAE complained that Qatar had systematically used the Al Jazeera television network “as a platform to disseminate false news and to support extremist and terrorist groups.”²⁵

The UAE argued that Al Jazeera was “State-owned and controlled” and “making and repeating incendiary and false claims against the UAE.”²⁶ In the view of the UAE, this continued action “aggravated and extended the dispute and made it more difficult to resolve.”²⁷ Following this allegation, the Emirates requested that the court order provisional measures against Qatar to safeguard the integrity of the proceeding, and prevent the UAE from suffering irreparable harm.²⁸ Specifically, the Emirates requested that the court order Qatar to “immediately stop its ... State-owned, controlled and funded media outlets from aggravating and extending the dispute and making it more difficult to resolve by disseminating false accusations regarding the UAE and the issues in dispute before the Court.”²⁹

In its order on June 14, 2019, the Court reaffirmed that it had *prima facie* jurisdiction, but concluded that it need not issue any additional specific provisional measures to protect the rights of the parties.³⁰ Implicitly, the Court concluded that the parties were already under an obligation not to aggravate the dispute and that the additional allegations regarding Al Jazeera did not call for additional provisional measures.³¹

In this order, the ICJ appears to implicitly reject the argument that Al Jazeera is a government or government-controlled

24. *See* Qatar v. U.A.E., 2019 I.C.J. 361 (June 14)

25. *See id.*

26. *See id.*

27. *See id.*

28. *See id.*

29. *See id.*

30. *See id.*

31. *See id.*

entity.³² If indeed it appeared *prima facie* that Al Jazeera had been aggravating the dispute and it was a government organ or controlled entity, then the UAE would be responsible for non-compliance with the Court's prior non-aggravation order.³³ The Court rejected the Emirates' arguments that Al Jazeera was state-controlled almost completely outright, barely deserving comment. It must have not even been arguable that Al Jazeera was a state organ or state-controlled entity.³⁴

C. Judgment on Preliminary Objections

On February 4, 2021, the Court gave its judgment on the preliminary objections raised by the UAE.³⁵ The Court essentially agreed that the CERD did not cover nationality discrimination, as opposed to national origin discrimination, which was covered.³⁶ The Court based its reasoning on (1) the nature of national origin as an immutable characteristic, unlike nationality;³⁷ (2) the exclusion from the CERD of distinctions between

32. *See id.*

33. *See id.*

34. *See id.*

35. *See id.*

36. *See* Application Of the Int'l Convention On the Elimination Of All Forms of Racial Discrimination (Qatar v. U.A.E.), Preliminary Objections, Judgment, ¶ 88 (Feb. 4, 2021), <https://www.icj-cij.org/public/files/case-related/172/172-20210204-JUD-01-00-EN.pdf> [hereinafter *Qatar v. U.A.E.*, Preliminary Objections, Judgment (Feb. 4, 2021)] ("the term 'national origin' in Article 1, paragraph 1, of CERD, in accordance with its ordinary meaning, read in its context and in the light of the object and purpose of the Convention, does not encompass current nationality."); *but see id.* (Bhandari, J. dissenting), ¶ 9:

In its attempt to distinguish between 'nationality' and 'national origin', the majority highlights the immutable nature of the meaning of 'national origin' and frames it in opposition to the transient nature of the meaning of 'nationality'. In doing so, the majority attempts to allude that the two terms are fundamentally disparate. As a result of this approach, the Judgment insufficiently delineates the ordinary meaning of the term 'national origin' and thereby reaches no real consensus on its meaning for the reasons set out below.

37. *See* Qatar v. U.A.E., Preliminary Objections, Judgment (Feb. 4, 2021), *supra* note 36 ¶ 81 ("The Court notes that the other elements of the definition of racial discrimination, as set out in Article 1, paragraph 1, of the Convention, namely race, colour and descent, are also characteristics that are inherent at birth.").

citizens and non-citizens,³⁸ and (3) the fact that the CERD was negotiated in the context of the decolonization movement which sought to abolish notions of racial superiority.³⁹ For these reasons, the Court dismissed the case.⁴⁰ Thus, the two provisional measures requested remain the only insight into the views of the Court in this case.

D. CERD Committee Cases

Alongside the ICJ case, Qatar has also filed two complaints before the CERD Committee, one against the UAE and the other against Saudi Arabia.⁴¹

38. *See id.* ¶ 83 (“In the Court’s view, such express exclusion from the scope of the Convention of differentiation between citizens and non-citizens indicates 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 — rights that are in dispute in this case — on the basis of their current nationality.”).

39. *See id.* ¶ 86 (“The Court notes that CERD was drafted against the backdrop of the 1960s decolonization movement ... the Preamble to the Convention clearly sets out its object and purpose, which is to bring to an end all practices that seek to establish a hierarchy among social groups as defined by their inherent characteristics or to impose a system of racial discrimination or segregation.”).

40. *See id.* ¶ 105 (“In light of the above, the Court finds that the term ‘national origin’ in Article 1, paragraph 1, of the Convention does not encompass current nationality. Consequently, the measures complained of by Qatar in the present case as part of its first claim, which are based on the current nationality of its citizens, do not fall within the scope of CERD.”).

41. *See generally* Comm. on the Elimination of Racial Discrimination, Admissibility of the Inter-State Communication Submitted by Qatar Against the U.A.E., ¶ 64, U.N. Doc. CERD/C/99/4 (Aug. 30, 2019) [hereinafter Admissibility of Qatar v. U.A.E.]; Comm. on the Elimination of Racial Discrimination, Jurisdiction of the Inter-State Commc’n Submitted by Qatar Against the U.A.E., U.N. Doc. CERD/C/99/3 (Aug. 30, 2019) [hereinafter Jurisdiction, Qatar v. U.A.E.]; Comm. on the Elimination of Racial Discrimination, Admissibility of the Inter-State Communication Submitted by Qatar Against the Kingdom of Saudi Arabia, U.N. Doc. CERD/C/99/6 (Aug. 30, 2019) [hereinafter Admissibility of Qatar v. Saudi Arabia]; Comm. on the Elimination of Racial Discrimination, Jurisdiction of the Inter-State Communication Submitted by Qatar Against the Kingdom of Saudi Arabia, U.N. Doc. CERD/C/99/5 (Aug. 30, 2019) [hereinafter Jurisdiction, Qatar v. Saudi Arabia].

The first case against the UAE, the Committee found the complaint to be admissible⁴² and falling within its jurisdiction.⁴³ In the second case against Saudi Arabia, the Committee also found the complaint to be admissible⁴⁴ and falling within its jurisdiction.⁴⁵ In both cases, the Committee easily found that it has jurisdiction.⁴⁶ Other than the claim that the mistreatment qualified as “racial” discrimination, which is properly considered an argument on the merits, the Committee did not find any arguments against jurisdiction.⁴⁷ It also found the cases admissible, finding that, aside from a repetition of the merits argument, the dispute over the exhaustion of domestic remedies was not submitted correctly and the argument of concurrent proceedings at the ICJ did not challenge the fairness of the proceedings.⁴⁸ These decisions suggest that Qatar has standing to protect the claims of Qatari nationals and Al Jazeera, and possibly that Al Jazeera is an entity whose claims the state can protect. Nevertheless, Qatar requested the CERD Committee to discontinue the case when the dispute was largely resolved diplomatically.⁴⁹

E. Conclusion on the Cases

These cases give the impression that the ICJ does not view Al Jazeera as a protected person nor does it view Al Jazeera as a government entity, but that, potentially, the CERD Committee does. Now that the cases before the Court and CERD Committee have been concluded, the only remaining option to reconcile these views is a CERD Committee General Recommendation.

42. See Comm. on the Elimination of Racial Discrimination, Admissibility of the Inter-State Communication Submitted by Qatar Against the U.A.E., ¶ 64, U.N. Doc. CERD/C/99/4 (Aug. 30, 2019) [hereinafter Admissibility of Qatar v. U.A.E.].

43. See Jurisdiction, Qatar v. U.A.E., *supra* note 41.

44. See Admissibility of Qatar v. Saudi Arabia, *supra* note 41.

45. See Jurisdiction, Qatar v. Saudi Arabia, *supra* note 41.

46. See *generally* Jurisdiction, Qatar v. U.A.E., *supra* note 41; Jurisdiction, Qatar v. Saudi Arabia, *supra* note 41.

47. See Jurisdiction, Qatar v. U.A.E., *supra* note 41, ¶¶ 52–60; see also Jurisdiction, Qatar v. Saudi Arabia, *supra* note 41, ¶¶ 50–53.

48. See Admissibility of Qatar v. Saudi Arabia, *supra* note 41, ¶¶ 8–23; see also Admissibility of Qatar v. U.A.E., *supra* note 44, ¶¶ 36–65.

49. Qatar v. UAE, Dec. on the req. for suspens. submitted by Qatar (Mar. 15, 2021)

II. MEDIA CORPORATION PROTECTION UNDER THE CERD

A. Rights of Free Expression and Broadcasting

This section addresses whether the actions at issue implicate the right to freedom of expression. It does not engage in a lengthy analysis of whether the actions violate the CERD. At least as a *prima facie* matter, they appear to.⁵⁰ Freedoms under the CERD include the right to hold and express an opinion.⁵¹ Qatar has asserted that the CERD covers freedom of expression,⁵² and that blocking transmissions “amounts to an interference with the right to freedom of expression.”⁵³

Comparing the CERD to the comparable protections under the European Convention on Human Rights (ECHR), the European Court of Human Rights (ECtHR) has held that freedom of expression protects television broadcasting.⁵⁴ The ECtHR has also specifically observed that television broadcasts are covered by the right to express opinions, and that television by its nature is a particularly significant means of expression.⁵⁵ The ECtHR has explained that ensuring the human right to free expression, including the right to criticize the government, is critical to good

50. *See infra*.

51. *See* CERD, art. 5(d)(viii).

52. *See* Qatar v. U.A.E., Provisional Measures (June 11, 2018), *supra* note 11, ¶ 12; CERD, *supra* note 2, art. 5(d)(viii); *see also* Interpretation & Application of the Int'l Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. U.A.E.), Verbatim Record, at Al-Khulaifi, ¶ 7(a)(iv) (June 29, 2018, 10:00 a.m.), <https://www.icj-cij.org/public/files/case-related/172/172-20180629-ORA-01-00-BI.pdf> (“freedom of expression of Qataris in the UAE, including by suspending the UAE’s closure and blocking of transmissions by Qatari media outlets...”).

53. Jurisdiction, Qatar v. U.A.E., *supra* note 41, ¶ 21; *see also* Admissibility of Qatar v. U.A.E., *supra* note 44 (by finding the complaint admissible, the committee implicitly agreed that such argument is plausible); Jurisdiction, Qatar v. Saudi Arabia, *supra* note 41, ¶ 23;

54. *See infra*.

55. *See* Murphy v. Ir., 2003-IX Eur. Ct. H.R. 1, 24 (2003); *see also* Pedersen & Baadsgaard v. Den., 2004-XI Eur. Ct. H.R. 105, 139 (2004); *see also* Centro Europa 7 S.r.l. & Di Stefano v. It., 2012-III Eur. Ct. H.R. 339, 386 (2012) (“The audio-visual media, such as radio and television, have a particularly important role in this respect. Because of their power to convey messages through sound and images, such media have a more immediate and powerful effect than print.”).

governance.⁵⁶ This right is not only a human right to broadcast views but also a right of people to receive those broadcasts.⁵⁷ Under the comparable right of free expression under the ECHR, the Court has interpreted that right to cover broadcasting.⁵⁸ While it is generally tolerable under the ECHR for public authorities to place some forms of limitations and restrictions on broadcasting, the full denial of broadcasting of a political point of view, especially during a political election or similarly sensitive time, raises concerns under human rights law.⁵⁹ The ECtHR opined that permitting some broadcasting is not sufficient, but that a diversity of views must be ensured.⁶⁰ Any licensing or restriction must be justified.⁶¹

If we follow the same reasoning under the CERD, the complete blocking of media transmissions would infringe the right to freedom of expression and rights to receive the transmissions.⁶² It would need serious justifications to remain in compliance with human rights.

56. See *Lingens v. Austria*, App. No. 9815/82, ¶ 41 (July 8, 1986), <https://hudoc.echr.coe.int/eng?i=001-57523>; see also *Socialist Party & Others v. Turk.*, App. No. 21237/93, ¶¶ 41–47 (May 25, 1998), <https://hudoc.echr.coe.int/eng?i=001-58172>; *Manole & Others v. Mold.*, 2009-IV Eur. Ct. H.R. 213, 256 (2009); *Centro Europa 7 S.r.l. & Di Stefano v. It.*, 2012-III Eur. Ct. H.R. at 385–86.

57. See *De Geillustreerde Pers N.V. v. Neth.*, App. No. 5178/71, ¶ 86 (Eur. Comm’n Hum. Rts., July 6, 1976); see also *Handyside v. U.K.*, App. No. 5493/72, ¶ 49 (Dec. 7, 1976), <https://hudoc.echr.coe.int/eng?i=001-57499>; *Lingens v. Austria*, App. No. 9815/82 at ¶ 41; *VgT Verein gegen Tierfabriken v. Switz.*, 2001-VI Eur. Ct. H.R. 243, 264–65 (2001); *Centro Europa 7 S.r.l. & Di Stefano v. It.*, 2012-III Eur. Ct. H.R. at 386 (“Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them ... A situation whereby a powerful economic or political group in society is permitted to obtain a position of dominance over the audio-visual media ... undermines the fundamental role of freedom of expression ... in particular where it serves to impart information and ideas of general interest, which the public is moreover entitled to receive.”).

58. See *Centro Europa 7 S.r.l. & Di Stefano v. It.*, 2012-III Eur. Ct. H.R. at 386.

59. See *X. & Assoc. of Z. v. U.K.*, App. No. 4515/70, Eur. Comm’n H.R. Dec. & Rep. 538, 544, 546 (1971).

60. See *Centro Europa 7 S.r.l. & Di Stefano v. It.*, 2012-III Eur. Ct. H.R. at 385, 386–87.

61. See *RTBF v. Belg.*, 2011-III Eur. Ct. H.R. 155, 187 (2011); see also *Centro Europa 7 S.r.l. & Di Stefano v. It.*, 2012-III Eur. Ct. H.R. at 386.

62. See *supra*.

B. Admissibility

A preliminary issue for any claim of violation of rights under the CERD is the admissibility of the claim. This Article questions whether Al Jazeera's corporate form has any bearing on the claim to protected rights of free expression. When it comes to issues of admissibility that might depend on the applicant's personality, there are two issues: standing and the exhaustion of domestic remedies. Another possibility for inadmissibility is the failure to have sufficient negotiations, which served as the basis to dismiss the *Georgia v. Russia CERD* case, though that question is not at issue in the present case and will not be discussed.⁶³

1. Standing

The CERD establishes two alternatives for challenging discrimination practices before third party bodies: the ICJ and the CERD Committee. This section examines each forum for issues of standing and exhaustion of domestic remedies.

i. CERD Committee

The CERD Committee was created by the CERD Convention.⁶⁴ It is not a formal judicial body and can only consider claims of CERD violations.⁶⁵ While it cannot issue binding judgments, its views on compliance with the CERD are highly persuasive as to whether a state has indeed violated the Convention.⁶⁶

a. Complaints by Individuals or Groups of Individuals

Only injured "individuals or groups of individuals" or their state may bring a claim before the Committee.⁶⁷ The Committee,

63. See Application of the Int'l Convention on the Elimination of All Forms of Racial Discrimination (Geor. v Russ.), Preliminary Objections, Judgment, 2011 I.C.J. Rep. 70, ¶ 181 (Apr. 1).

64. See CERD, art. 8(1).

65. See *id.*

66. Office of the UN High Commissioner on Human Rights, Committee on the Elimination of Racial Discrimination, <https://www.ohchr.org/en/treaty-bodies/cerd>

67. For inter-state complaints, see CERD, art. 11(1) ("If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee."). For individual complaints, see *id.* at art. 14(1) ("A State Party may at any time declare that it recognizes the competence of the Committee to receive and

in its jurisprudence, has demanded that individual applicants be “directly and personally affected by the action (or the omission)”.⁶⁸

The Committee has held that “groups of individuals” could take the form of a single, collective, legal entity,⁶⁹ provided that the entity has been directly affected as a victim.⁷⁰ This requirement could be satisfied by the group, or its entity, having suffered mistreatment itself.⁷¹ It could also satisfy this requirement by representing a victim.⁷² The Committee has acknowledged that it is not required for the entire group of individuals, or the legal entity organizing the group, to have all suffered the

consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.”).

68. Comm. on the Elimination of Racial Discrimination, Doc. & Adv. Ctre on Racial Discrim. v. Den., ¶ 6.6, Commc’n. No. 28/2003 (Aug. 26, 2003) [hereinafter Doc. & Adv. Ctre. v. Den.]; see also Comm. on the Elimination of Racial Discrimination on Its Seventy-Ninth Session, Decision on Admissibility, ¶ 7.2, U.N. Doc. CERD/C/79/D/45/2009 (A.S. v. Russ.) (Aug. 26, 2011) [hereinafter Admissibility, A.S. v. Russ.].

69. See Comm. on the Elimination of Racial Discrimination on Its Seventy-Second Session, Zentralrat Deutscher Sinti und Roma et al. v. Germ., Comm. No. 38/2006, ¶ 7.2, U.N. Doc. CERD/C/72/D/38/2006 (Feb. 22, 2008) [hereinafter Zentralrat v Ger.] (“The Committee does not consider the fact that two of the authors are organisations to be an obstacle to admissibility. Article 14 of the Convention refers specifically to the Committee’s competence to receive complaints from ‘groups of individuals’...”); see also Comm. on the Elimination of Racial Discrimination at Its Eighty-Second Session, TBB-Turkish Union in Berlin/Brandenburg v. Germ., ¶¶ 11.3–11.4, U.N. Doc. CERD/C/82/D/48/2010 (Feb. 26, 2013) [hereinafter Opinion, TBB v. Germ.].

70. See, e.g., Comm. on the Elimination of Racial Discrimination at Its Sixty-Seventh Session, Jewish Cmty. of Oslo et al. v. Nor., ¶ 7.4, U.N. Doc. CERD/C/67/D30/2003 (Aug. 15, 2005) [hereinafter Jewish Cmty. v. Nor.]; Zentralrat v Ger. *supra* note 69, ¶ 7.2 (“...the Committee considers that, bearing in mind the nature of the organisations’ activities and the groups of individuals they represent, they do satisfy the “victim” requirement within the meaning of article 14(1).”); Opinion, TBB v. Germ., *supra* note 69, ¶ 11.3.

71. See Doc. & Adv. Ctre v. Den., *supra* note 68, ¶ 6.4 (“The Committee does not exclude the possibility that a group of persons ... may submit an individual communication, provided that it is able to prove that it has been an alleged victim of a violation of the Convention ...”).

72. See *id.*

discriminatory treatment.⁷³ That being said, the group cannot maintain a claim if it generally represents people with a shared characteristic, but none of whom are specifically victims of the alleged mistreatment..⁷⁴ It must contain a victim in its group,⁷⁵ and be specifically authorized and instructed to act for the victim.⁷⁶

For comparative purposes, we can consider other human rights instruments. Legal persons do not have standing before the Human Rights Committee to pursue complaints under the International Covenant on Civil and Political Rights.⁷⁷ Other treaties are more generous. The African Commission on Human and People's Rights permits standing to non-governmental organizations.⁷⁸ In fact, a non-governmental organization (NGO)

73. See *Jewish Cmty. v. Nor.*, *supra* note 70, ¶ 7.4 ("The Committee considered that ... to require that each individual within the group be an individual victim of an alleged violation, would be to render meaningless the reference to 'groups of individuals.' The Committee had not hitherto adopted such a strict approach to these words.").

74. See *Doc. & Adv. Ctre v. Den.*, *supra* note 68, ¶ 6.4.

75. See generally *Zentralrat v Ger.* *supra* note 69, ¶ 7.2; see also *Doc. & Adv. Ctre v. Den.*, *supra* note 68, ¶¶ 6.4, 6.6 ("it does not automatically follow that persons not directly and personally affected by such discrimination may claim to be victims of a violation of any of the rights guaranteed in the Convention. Any other conclusion would open the door for popular actions (*actio popularis*) against the relevant legislation of States parties.") ("The Committee does not exclude the possibility that a group of persons representing, for example, the interests of a racial or ethnic group, may submit an individual communication, provided that it is able to prove ... that one of its members has been a victim, and if it is able at the same time to provide due authorization to this effect.") *Jewish Cmty. v. Nor.*, *supra* note 70, ¶ 7.4.

76. See *Doc. & Adv. Ctre v. Den.*, *supra* note 68, ¶ 6.4; *Jewish Cmty. v. Nor.*, *supra* note 70, ¶ 7.4; cf. *X. Assoc. v. Swed.*, App. No. 9297/81, ¶ 1 (Mar. 1, 1982), <https://hudoc.echr.coe.int/eng?i=001-74014>; cf. *Fed. of Fr. Med. Trade Unions & Nat'l Fed. of Nurses*, App. No. 10983/84, ¶¶ 1-2 (May 12, 1986), <https://hudoc.echr.coe.int/eng?i=001-76830>.

77. See Hum. Rts. Comm. at Its Twelfth Session, *Hartikainen v. Fin.*, ¶ 3, U.N. Doc. CCPR/C/OP/1 (Apr. 9, 1981); see also Hum. Rts. Comm. at Its Eighteenth Session, *J.R.T. & the W.G. Party v. Can.*, ¶ 8(a), U.N. Doc. CCPR/C/OP/2 (Apr. 6, 1983); Hum. Rts. Comm. at Its Thirty-Sixth Session, *A Newspaper Publ. Co. v. Trin. & Tob.*, ¶ 3.2, Comm. No. 360/1989 (July 14, 1989).

78. See Union Nationale des Syndicats Autonomes du Sénégal v. Sénégal, No. 226/99, Decision, African Comm'n on Human & People's Rights [Afr. Comm'n H.P.R.], ¶ 2 (Oct. 23-Nov. 6, 2000), <http://caselaw.ih-rda.org/doc/226.99/view/en/> [hereinafter *Union Nationale v. Sénégal*]; see also *Art. 19 v. Eritrea*, No. 275/2003, Decision, African Comm'n on Human & People's Rights [Afr. Comm'n H.P.R.], ¶ 43 (May 16-30, 2007),

can file the complaint on behalf of a victim without needing to have victim status on its own.⁷⁹ This ability to make a claim on behalf of others has even been extended to media companies as corporations.⁸⁰ The American Convention on Human Rights (AmCHR) grants an unusual standing formula: non-governmental organizations and corporations have standing to file complaints before the Inter-American Commission on Human Rights, but not before the Inter-American Court of Human Rights.⁸¹ The Court is only open to states and the Commission.⁸²

It is also possible for legal persons to have standing under the ECHR.⁸³ In Article 34, the Convention provides that:

The Court may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto⁸⁴

Clearly, one key difference from the CERD is that the ECHR specifically grants standing to NGOs, which can be legal persons.⁸⁵ Nonetheless, the CERD Committee, through its

<https://africanlii.org/sites/default/files/judgment/afu/african-commission-human-and-peoples-rights/2007-achpr-79//Article%2019%20v.%20Eritrea%2C%20Decision%2C%20275%20of%202003%20%28AC-mHPR%2C%20May.%2030%2C%202007%29.pdf>.

79. See *Union Nationale v. Sénégal*, *supra* note 78.

80. See *Media Rts. Agenda & Others v. Nigeria*, Nos. 105/93, 128/94, 130/94, and 152/96, African Comm'n on Human & People's Rights [Afr. Comm'n H.P.R.], ¶¶ 1–4, 57, 71–77 (Oct. 31, 1998), <http://caselaw.ihrda.org/doc/105.93-128.94-130.94-152.96/view/en/>; see also *Con. Rts. Proj. & Civ. Libs. Org. v. Nigeria*, No. 102/93, African Comm'n on Human & People's Rights [Afr. Comm'n H.P.R.], ¶ 59, (Oct. 31, 1998), <http://caselaw.ihrda.org/doc/102.93/view/en/>; *Con. Rts. Proj., Civ. Libs. Org. & Media Rts. Agenda v. Nigeria*, Nos. 140/94, 141/94, and 145/95, African Comm'n on Human & People's Rights [Afr. Comm'n H.P.R.], ¶ 37 (Nov. 15, 1999), <http://caselaw.ihrda.org/doc/140.94-141.94-145.95/view/en/>. [hereinafter *Con. Rts Proj. et al. v. Nigeria*].

81. ACHR, art. 44

82. See ACHR, art. 61..

83. See *infra*.

84. ECHR, art. 34

85. See *Times Newspaper Ltd. et al. v. U.K.*, App. No. 6538/74, at 95, ¶ 1 (Eur. Comm'n Hum Rts., Mar. 21, 1975) [hereinafter *Times Newspaper v. U.K.*] (“Times Newspapers Ltd. is a legal person under English law, a company with corporate capacity and limited liability, created by registration under the relevant statute. As such it falls clearly within one of the categories of petitioners set out in Art. 25 of the Convention as a ‘non-governmental organisation.’”);

jurisprudence, has largely recognized the same option under the CERD.⁸⁶ In particular, the ECtHR also considers that corporations could be qualifying legal persons,⁸⁷ provided the corporation is a victim itself.⁸⁸ Looking specifically at media companies, the media product itself, such as a newspaper, does not have standing,⁸⁹ though the company producing the product would have standing.⁹⁰ It could be that when the ECtHR referred to the “newspaper” in the *Times Newspaper Ltd.* case, that it was actually meaning the employees of the media outlet as a collective, not the product.⁹¹ As such, the “newspaper” would then be a method for referring to a group of individuals.

The CERD Committee has described a group of persons, incorporated as a legal entity, as an “organization”.⁹² For comparative purposes, the ECHR identifies organizations as including

Ljubljanska Banka d.d. v. Croat., App. No. 29003/07, ¶ 50 (May 12, 2015), <https://hudoc.echr.coe.int/eng?i=001-154983> [hereinafter *Ljubljanska Banka v. Croat.*] (“a legal entity may lodge an individual application only if it may be regarded as a ‘non-governmental organisation’ within the meaning of Article 34 of the Convention...”).

86. See *infra* fn 97 *et seq.*

87. See *Times Newspaper v. U.K.*, *supra* note 85, at 95, ¶ 1 (“Times Newspapers Ltd. is a legal person under English law, a company with corporate capacity and limited liability, created by registration under the relevant statute. As such it falls clearly within one of the categories of petitioners set out in Art. 25 of the Convention as a ‘non-governmental organisation’.”).

88. See *NBTK & Swig Group Inc. v. Russ.*, App. No. 307/02, at 8, (Mar. 23, 2006), <https://hudoc.echr.coe.int/eng?i=001-73215>; see also *Ernewein v. Ger.*, App. No. 14849/08, at 4 (May 12, 2009), <https://hudoc.echr.coe.int/eng?i=001-92808>.

89. See *Times Newspaper v. U.K.*, *supra* note 85, at 95, ¶ 1 (“As regards the second applicant it is clear that The Sunday Times as a printing product, owned and published by the first applicant, does not as such fall within any of the categories of petitioners set forth in Art. 25 of the Convention, nor can it claim as such to be a victim of a breach of Art. 10.”).

90. See *id.* (“[Times Newspapers Ltd.] was the party in the domestic proceedings concerned in the present case and the injunction granted by the House of Lords expressly applies to it. It follows that the first applicant may clearly claim to be a victim of a breach of Art. 10 of the Convention notwithstanding the fact that it possesses legal and not natural personality”).

91. See *id.* (“... The Sunday Times ... does not as such fall within any of the categories of petitioners ..., nor can it claim as such to be a victim of a breach of Art. 10. However, in the present case, the application has been introduced by ‘The Sunday Times as a group of journalists’”. The name ‘Sunday Times’ thus simply describes a group of individuals who are claiming themselves, as journalists, to be victims of a breach of Art. 10.”).

92. See *Zentralrat v Ger.*, *supra* note 69, ¶ 7.2.

corporations; however, the ECHR distinguishes “groups” from “organizations.”⁹³ Thus, the CERD Committee appears to regard organizations, including legal persons, as a sub-category of groups, while the ECHR views organizations, including legal persons, as a separate category from groups. Since the CERD understands organizations to qualify as groups, the ECHR interpretation of “groups” and “organizations” might not have any persuasive value in the CERD context.

In short, the ECHR interprets the NGO option to be quite broad and only prohibiting governmental bodies from seizing the Court.⁹⁴ The Court reasons that this distinction is intended to prevent a state from being both applicant and respondent in a single case.⁹⁵ Following this distinction, the Court has built a line of jurisprudence that identifies whether an entity is a NGO or a state entity. Certainly, state organs and sub-state organs are barred.⁹⁶ However, the Court does not go so far as to say that

93. See Eur. Convention on Hum. Rts., art. 34 (Sept. 3, 1953) [hereinafter ECHR] (“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim . . .”).

94. See 16 Austrian Communes v. Austria, App. No. 5767/72, ¶ 1 (May 31, 1974), <https://hudoc.echr.coe.int/eng?i=001-3179>; see also The Municipal Section of Antilly v. Fr., App. No. 45129/98, at 4–5 (Nov. 23, 1999), <https://hudoc.echr.coe.int/eng?i=001-5648>; Ayuntamiento de M v. Spain, App. No. 15090/89, at 215 (Jan. 7, 1991), <https://hudoc.echr.coe.int/eng?i=001-83518>; Ljubljanska Banka v. Croat., *supra* note 85, ¶ 51 (“non-governmental organisation’ . . . is opposed to ‘governmental organisation’ . . .”).

95. See Islamic Rep. of Iran Shipping Lines v. Turk., 2007-V Eur. Ct. H.R. 326, 2007-V Eur. Ct. H.R. 327, 349 (2007) [hereinafter Iran Shipping Lines v. Turk.]; see also State Holding Company Luganksvugillya v. Ukr., App. No. 23938/05, 3 (Jan. 27, 2009), <https://hudoc.echr.coe.int/eng?i=001-91343> [hereinafter Luganksvugillya v. Ukr.]; Transpetrol, a.s. v. Slov., App. No. 28502/08, ¶ 60 (Nov. 15, 2011), <https://hudoc.echr.coe.int/eng?i=001-107743> [hereinafter Transpetrol v. Slov.] (“... provided that it is a ‘non-governmental organisation’ within the meaning of Article 34 of the Convention and that the idea behind this principle is to prevent a Contracting Party acting as both an applicant and a respondent party before the Court...”).

96. See Consejo General de Colegios Oficiales de Economistas de España v. Sp., App. Nos. 26114/95 & 26455/95, at 153 (June 28, 1995), <https://hudoc.echr.coe.int/eng?i=001-87067> [hereinafter Consejo General v. Sp.]; see also RENFE v. Sp., App. No. 35216/97, at 182 (Sept. 8, 1997), <https://hudoc.echr.coe.int/eng?i=001-87755> [hereinafter RENFE v. Sp.]; Croat. Ch. Comm. v. Serb., App. No. 819/08, ¶ 30 (Apr. 25, 2017), <https://hudoc.echr.coe.int/eng?i=001-173851> [hereinafter Croat. Ch. Comm. v. Serb.] (“That means that public bodies, such as central organs of the State, local and regional authorities”).

an entity must be part of the state to be prohibited.⁹⁷ An entity formally part of the state can qualify as non-governmental if it is sufficiently independent and has no public administration purpose or powers.⁹⁸ Likewise, existing as a formally separate entity is not itself sufficient to make an entity non-governmental,⁹⁹ so other entities that are dependent on the state¹⁰⁰ or otherwise exercise public powers or manage public services might still be prohibited.¹⁰¹ These factors include: the entity's legal status,¹⁰² whether the entity is governed by domestic company law,¹⁰³ whether it exercises (governmental) powers beyond those normally permitted under private law,¹⁰⁴ whether it is subject to the jurisdiction of ordinary courts or the state's administrative court system,¹⁰⁵ whether it carries out commercial activities or

97. See *Ljubljanska Banka v. Croat.*, *supra* note 85, ¶ 55 (“[T]here is nothing in the text of Article 34 of the Convention to suggest that the term ‘non-governmental organisation’ could be construed so as to exclude only those governmental organisations which could be regarded as a part of the respondent State.”).

98. See *Österreichischer Rundfunk v. Austria*, App. No. 35841/02, ¶¶ 46–54 (Dec. 7, 2006), <https://hudoc.echr.coe.int/eng?i=001-78381> [hereinafter *Österreichischer Rundfunk v. Austria*]; see also *Iran Shipping Lines v. Turk.*, *supra* note 95, at 349.

99. See *Croat. Ch. Comm. v. Serb.*, *supra* note 95, ¶ 38.

100. See *id.*

101. See *Luganksvugillya v. Ukr.*, *supra* note 95, at 3.

102. See *The Holy Monasteries v. Greece*, App. No. 13092/87, ¶¶ 12–15 (Dec. 9, 1994), <https://hudoc.echr.coe.int/eng?i=001-57906> [hereinafter *Holy Monasteries v. Greece*]; *Radio Fr. & Others v. Fr.*, 2003-X Eur. Ct. H.R. 461, 486 (2003) [hereinafter *Radio Fr. v. Fr.*]; see also *Luganksvugillya v. Ukr.*, *supra* note 95, at 3; *Ch. of Commerce, Ind. & Agri. of Timișoara (no. 2) v. Rom.*, App. Nos. 23520/05 et al., ¶¶ 14–17 (July 16, 2009), <https://hudoc.echr.coe.int/eng?i=001-93541> [hereinafter *Ch. of Commerce (no. 2) v. Rom.*]; *Transpetrol v. Slov.*, *supra* note 95, ¶ 63; *Croat. Ch. Comm. v. Serb.*, *supra* note 95, ¶ 30.

103. See *Consejo General v. Sp.*, *supra* note 95, at 153; see also *RENFE v. Sp.*, *supra* note 95, at 182; *Iran Shipping Lines v. Turk.*, *supra* note 95, at 349–50; *Transpetrol v. Slov.*, *supra* note 95, ¶ 61; *Croat. Ch. Comm. v. Serb.*, *supra* note 95, ¶ 30.

104. See *Consejo General v. Sp.*, *supra* note 95, at 153; see also *RENFE v. Sp.*, *supra* note 95, at 182; *Iran Shipping Lines v. Turk.*, *supra* note 95, at 349–50; *Luganksvugillya v. Ukr.*, *supra* note 95, at 3; *Transpetrol v. Slov.*, *supra* note 95, ¶ 61; *Croat. Ch. Comm. v. Serb.*, *supra* note 95, ¶ 30.

105. See *Iran Shipping Lines v. Turk.*, *supra* note 95, at 349–50; see also *Transpetrol v. Slov.*, *supra* note 95, ¶ 61.

public services,¹⁰⁶ whether it enjoys an enforced monopoly,¹⁰⁷ whether it is wholly-owned by the state,¹⁰⁸ whether it has institutional and operational independence from the political authorities,¹⁰⁹ whether it was established as mirror image of the state structure,¹¹⁰ whether the opening of offices abroad requires government approval,¹¹¹ whether its decisions are public law decisions,¹¹² whether membership is compulsory,¹¹³ whether it defines itself as a public institution,¹¹⁴ whether its decisions are reviewed in a public legal system,¹¹⁵ whether it exercises lawfully delegated public functions,¹¹⁶ and whether it acquires revenue from public functions.¹¹⁷

In some cases, an entity might have features of both a “governmental” and a “non-governmental organization.”¹¹⁸ In these cases, the assessment is based on the “overall procedural and substantive context of the application.”¹¹⁹ For example, if the

106. See *Holy Monasteries v. Greece*, *supra* note 102, ¶ 15; see also *Consejo General v. Sp.*, *supra* note 95, at 153; *RENFE v. Sp.*, *supra* note 95, at 182; *Radio Fr. v. Fr.*, *supra* note 102, at 486; *Iran Shipping Lines v. Turk.*, *supra* note 95, at 349–50; *Luganksvugillya v. Ukr.*, *supra* note 95, at 3–4; *Transpetrol v. Slov.*, *supra* note 95, ¶ 62; *Croat. Ch. Comm. v. Serb.*, *supra* note 95, ¶ 30.

107. See *Iran Shipping Lines v. Turk.*, *supra* note 95, at 349–50; see also *Transpetrol v. Slov.*, *supra* note 95, ¶ 62.

108. See *Iran Shipping Lines v. Turk.*, *supra* note 95, at 349; see also *Transpetrol v. Slov.*, *supra* note 95, ¶ 62; *Zastava It Turs v. Serb.*, App. No. 24922/12, ¶¶ 19–23 (Eur. Ct. Hum. Rts., Apr. 9, 2013) [hereinafter *Zastava v. Serb.*] (includes, *inter alia*, State-owned companies which do not enjoy “sufficient institutional and operational independence from the State...”).

109. See *Radio Fr. v. Fr.*, *supra* note 102, at 486–87; see also *Luganksvugillya v. Ukr.*, *supra* note 95, at 3; *Ch. of Commerce (no. 2) v. Rom.*, *supra* note 106, ¶¶ 14–17; *Transpetrol v. Slov.*, *supra* note 95, ¶ 63; *Zastava v. Serb.*, *supra* note 108, ¶¶ 19–23; *Ljubljanska Banka v. Croat.*, *supra* note 85, ¶ 51; *Croat. Ch. Comm. v. Serb.*, *supra* note 95, ¶ 30.

110. See *Croat. Ch. Comm. v. Serb.*, *supra* note 95, ¶ 31.

111. See *id.*

112. See *Kamer van Koophandel en Fabrieken voor Zuid-West Gelderland, et al. v. Neth.*, App. No. 39651/98 at 37 (Eur. Ct. Hum. Rts., May 3, 2001); see also *Croat. Ch. Comm. v. Serb.*, *supra* note 95, ¶ 32.

113. See *Croat. Ch. Comm. v. Serb.*, *supra* note 95, ¶ 33.

114. See *id.* ¶ 34.

115. See *id.* ¶ 35.

116. See *id.* ¶ 36.

117. See *id.* ¶ 37.

118. See *Transpetrol v. Slov.*, *supra* note 95, ¶ 64.

119. See *id.* ¶ 67 (“However, rather than weighting the elements mentioned in the precedent two paragraphs against each other, the Court is of the opinion that the decisive considerations for the determination of the *locus standi* of the

case was essentially about ownership of shares (and therefore property rights), then the entity would be covered by the ECHR.¹²⁰ If the entity functioned as a non-governmental organization for purposes of the application, then it would also be covered.¹²¹ On the other hand, if the entity and the government had a “unity of interests,” then the entity would be considered a governmental entity.¹²²

b. Inter-State Disputes

In contrast to the cases above, the issues of standing and victim status do not appear to apply to inter-state complaints.¹²³ Obviously they cannot because a state could never be injured in the sense of being a victim, in order to have standing as a person or group of persons might.¹²⁴ Instead, the CERD provides that a state has standing to bring a complaint if it “considers that another State Party is not giving effect to the provisions of this Convention.”¹²⁵ Thus, the Committee, in the two cases filed by

applicant company under Article 34 of the Convention in the present case lie in the assessment of the overall procedural and substantive context of the application and of its underlying facts.”).

120. *See id.* ¶ 71.

121. *See id.* 71.

122. *See id.* ¶¶ 73, 76 (“The Court further considers that the unity of interests of the applicant company, if any, and of the Government in the present case is demonstrated by the fact that the latter, through the Ministry, sought to contest the same judgment of the Constitutional Court in applications submitted in reliance on Article 34 of the Convention ...”); *id.* ¶ 74 (“Moreover, the Court is of the view that this unity of interests is also reflected in the tenor and content of the Government’s arguments under Article 34 of the Convention ... and the fact that the applicant company in the present case and the Government in its applications ... were represented by the same lawyer ...”).

123. *See infra.*

124. *See* *Slovn. v. Croat.*, App. No. 54155/16, ¶ 43 (Eur. Ct. Hum. Rts., Nov. 18, 2020) [hereinafter *Slovn. v. Croat.*] (“the Slovenian Government are undoubtedly entitled to submit an inter-State application under Article 33; moreover, they do not have to be in any way – even indirectly – aggrieved by the alleged violations”); *Cyprus v. Turk.*, App. No. 25781/94, ¶ 46 (May 12, 2014), <https://hudoc.echr.coe.int/Eng?i=001-59454> [hereinafter *Cyprus v. Turk.*].

125. CERD, art. 11(1) (“If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee.”).

However, states do not generally espouse injury to individuals who are not their nationals, with the sole exception of individuals who might share their dominant national or ethnic origin. *See e.g.*, Application of the Int’l Convention on the Elimination of All Forms of Racial Discrimination (*Arm. v. Azer.*),

Qatar before it, has affirmed their jurisdiction without any issues of standing.¹²⁶

This practice is largely the same as at other human rights bodies.¹²⁷ The ECHR, for example, also permits inter-state complaints.¹²⁸ While Article 33, providing for inter-state complaints, and Article 34, providing for individual complaints, both empower these actors to bring actions against states violating the ECHR, they establish different parameters for standing.¹²⁹ Article 34 imposes a rigorous test that the victim is not a state actor,¹³⁰ discussed above. Article 33, for obvious reasons, does not.¹³¹ Nonetheless, the ECtHR in the recent *Slovenia v Croatia* inter-state case concluded that a governmental entity does not enjoy any rights under the ECHR.¹³² Thus, while the state clearly has standing to bring the claim, there is no substantive claim to make.¹³³

ii. CERD at the ICJ

The ICJ is a court of general jurisdiction and can entertain claims by states on a wide range of matters.¹³⁴ For the CERD, states can only bring claims before the ICJ on matters concerning the “interpretation or application” of the Convention.¹³⁵

Provisional Measures, 2021 I.C.J. ¶¶ 46, 60. (Dec. 7), <https://www.icj-cij.org/public/files/case-related/180/180-20211207-ORD-01-00-EN.pdf> [hereinafter *Arm. v. Azer.*, Provisional Measures] (claiming injury to individuals with Armenian national or ethnic origin).

126. *See* Jurisdiction, Qatar v. U.A.E., *supra* note 41, ¶ 60; *see also* Admissibility of Qatar v. U.A.E., *supra* note 44 (by finding the complaint admissible, implicitly agreeing that such argument is plausible); Jurisdiction, Qatar v. Saudi Arabia, *supra* note 41, ¶¶ 50–53; Admissibility of Qatar v. Saudi Arabia, *supra* note 41.

127. *See infra*.

128. *See* ECHR, art. 33; *Greece v U.K.*, App. No. 176/56, at 2 (Eur. Comm’n Hum. Rts., June 2, 1956); *Austria v It.*, App. No. 788/60, at 51 (Eur. Comm’n Hum. Rts., Jan. 11, 1961); *Ir. v U.K.*, App. Nos. 5310/71 & 5451/72, at 91 (Eur. Comm’n Hum. Rts., Oct. 1, 1972); *Ir. v U.K.*, App. No. 5310/71, ¶ 159 (Eur. Ct. Hum. Rts., Jan. 18, 1978).

129. *See* ECHR, arts. 33–34.

130. *See id.* at art. 34.

131. *See id.* at art. 33.

132. *See* *Slovn. v. Croat.*, *supra* note 124, ¶ 66.

133. *See id.*, ¶¶ 43, 66, 70.

134. *See* International Court of Justice, Contentious Jurisdiction, <https://icj-cij.org/contentious-jurisdiction>

135. CERD, art. 22.

When it comes to the ICJ, the CERD does not elaborate on extensive standing requirements as it does for the Committee.¹³⁶ Nevertheless, the ICJ does appear to sometimes apply the requirement that parties exhaust domestic remedies.

2. Exhaustion of Domestic Remedies

The exhaustion of domestic remedies requirement also raises the problem of the nature of the claimant and the rights holder. The issue of exhaustion of domestic remedies depends on whether the claimant is a person or the state, and whether the state is asserting its own right or the rights of its nationals. And if the claim is a right of state or national, whether Al Jazeera is a part of the state or a national thereof. Thus, whether the claim requires the exhaustion of domestic remedies informs us of whether the claim is viewed as a claim of a person or a state.

i. CERD Committee

As noted above, both states and individuals can bring claims to the Committee.¹³⁷ In either case, the Committee can only accept cases where the injured victim has “invoked and exhausted” all available domestic remedies.¹³⁸ The only distinction between the two claimants is that, for states, the exhaustion must be “in conformity with the generally recognized principles of international law,” while for an individual claimant, the exhaustion requirement does not specifically state that it must be in line with this rule of international law.¹³⁹ Presumably, because the text is deliberately distinct, the two requirements must have some appreciable difference. Virtually all other human rights treaties

136. *See id.*

137. *See* CERD, arts 11(1), 14(1).

138. For inter-state complaints, *see* CERD, art. 11(3) (“The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article [inter-state complaints] after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.”). For individual complaints, *see id.* at art. 14(7)(a) (“The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged...”).

139. *See id.*

require the exhaustion of domestic remedies for individual complaints.¹⁴⁰

Quite rightly, then, the UAE demanded before the Committee that Qatar show how the affected persons have exhausted their domestic remedies.¹⁴¹

ii. CERD at the ICJ

The UAE has argued that, in bringing the case before the ICJ, Qatar is effectively exercising diplomatic protection.¹⁴² As such, the claims require the exhaustion of local remedies.¹⁴³ The

140. See Optional Protocol to the International Convention on Civil and Political Rights art. 5(2)(b), Dec. 19, 1966, 999 U.N.T.S. 171; ECHR art. 35(1); American Convention on Human Rights “Pact of San Jose, Costa Rica” art. 46(1)(a), Nov. 22, 1969, 1144 U.N.T.S. 123; African Charter on Human and Peoples’ Rights art. 56(5), June 27, 1981, 1520 U.N.T.S. 217.

141. See Jurisdiction, Qatar v. U.A.E., *supra* note 41, ¶ 30; see also Admissibility of Qatar v. U.A.E., *supra* note 44, ¶ 38 ; Jurisdiction, Qatar v. Saudi Arabia, *supra* note 41, ¶¶ 50–53; Admissibility of Qatar v. Saudi Arabia, *supra* note 41.

142. See Interpretation & Application of the Int’l Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. U.A.E.), Verbatim Record, at Treves, ¶ 3, I.C.J. Doc. CR 2018/13 (June 28, 2018, 10:00 a.m.), <https://www.icj-cij.org/files/case-related/172/172-20180628-ORA-01-00-BI.pdf> [hereinafter Qatar v. U.A.E., Verbatim Record (June 28, 2018, 10:00 a.m.)]; citing Int’l Law Comm’n, *Draft Articles on Diplomatic Protection with Commentaries*, Rep. on the Work of Its Fifty-Eighth Session, U.N. Doc. A/61/10 (2006) [hereinafter *ILC Draft Articles on Diplomatic Protection*].

Cf. Slovn. v. Croat., *supra* note 124, ¶ 67. (where the ECtHR found that interstate complaints of violations of the ECHR are comparable to diplomatic protection claims, though the Court did not go so far as to conclude that they are diplomatic protection claims):

there are two basic categories of inter-State complaints [under the ECHR]: those pertaining to general issues with a view to protecting the public order of Europe, and those where the applicant State denounces violations by another Contracting Party of the basic human rights of one or more clearly identified or identifiable persons; the latter are substantially similar both to individual applications under Article 34 and to claims filed in the context of diplomatic protection. (*citing* Cyprus V. Turk., *supra* note 124, ¶¶ 43–45)

143. See Qatar v. U.A.E., Verbatim Record (June 28, 2018, 10:00 a.m.), *supra* note 142, at Treves, ¶ 4 (*citing* ILC *Draft Articles on Diplomatic Protection*, *supra* note 142, at art. 14; Elettronica Sicula S.p.A. (ELSI) (U.S. v. It.), Judgment, 1989 I.C.J. Rep. 15, ¶ 50 (July 20) [hereinafter ELSI (U.S. v. It.)])

Emirates points to the requirement of exhaustion in the CERD.¹⁴⁴ In its view, the only time such a diplomatic protection claim could avoid the obligation to exhaust domestic remedies is when there are “special circumstances of interdependence of the rights of the State and of individual rights” as in Vienna Convention on Consular Relations (VCCR),¹⁴⁵ and the VCCR is *sui generis*.¹⁴⁶

Notwithstanding the UAE’s submissions, the provision in the CERD permitting complaint before the ICJ does not include an exhaustion requirement.¹⁴⁷ Specifically, Article 22 states that “[a]ny dispute between two or more States Parties with respect to the interpretation or application of this Convention . . . shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision”¹⁴⁸ Because the Committee applications, whether individual or inter-state, include exhaustion requirements in the relevant articles, and the ICJ option does not, it stands to reason that relief before the ICJ does not require exhaustion.

Qatar argued that the exhaustion requirement is not necessary when it acts “on its own behalf and on behalf of its nationals.”¹⁴⁹ We can imagine the outcome if the CERD contained no Committee or individual complaint mechanism. Then, the provision for ICJ dispute settlement would be clearly a matter of one state violating its treaty obligations to another state by acting in a manner contrary to the treaty. It would not be a matter of taking up the claim of one of its nationals, and exhaustion would not apply. While the CERD negotiators added the option of an individual or state seizing the Committee, they did so along with

144. See *Qatar v. U.A.E.*, Verbatim Record (June 28, 2018, 10:00 a.m.), *supra* note 142, at Treves, ¶¶ 5–6.

145. Interpretation & Application of the Int’l Convention on the Elimination of All Forms of Racial Discrimination (*Qatar v. U.A.E.*), Verbatim Record, at Treves, ¶ 10 (June 29, 2018, 4:30 p.m.), <https://www.icj-cij.org/public/files/case-related/172/172-20180629-ORA-02-00-BI.pdf> [hereinafter *Qatar v. U.A.E.*, Verbatim Record (June 29, 2018, 4:30 p.m.)].

146. See *id.* at Treves, ¶ 11 (*citing* LaGrand (Ger. v. U.S.), Judgment, 2001 I.C.J. Rep. 466, ¶ 74 (June 27)).

147. See *infra*.

148. See CERD, art.11.

149. See *Qatar v. U.A.E.*, Verbatim Record (June 29, 2018, 10:00 a.m.), *supra* June note 52 at Klein, ¶¶ 3-4 (*citing* Avena & Other Mexican Nationals (Mex. V. U.S.), Judgment, 2004 I.C.J. Rep. 12, ¶ 40 (Mar. 31)).

imposing an exhaustion requirement for those cases.¹⁵⁰ But that addition should not implicitly restrict the dispute before the ICJ. Note that the negotiators clearly knew about the customary international law requirement of exhaustion for claims by states on behalf of individuals when they drafted Article 11 and invoked the rule.¹⁵¹ By mentioning it in that article and not also under Article 22, it places its application under Article 22 in doubt.

That being said, the ICJ appears to sometimes erroneously apply an exhaustion requirement.¹⁵² In the *Ukraine v Russia ICSFT/CERD* case, the Court stated that “local remedies must be previously exhausted as a matter of customary international law in cases in which a State brings a claim on behalf of one or more of its nationals,” and applied it to the ICSFT and CERD.¹⁵³ It is possible to find consistency in the ICJ order demanding exhaustion and the lack of an exhaustion requirement in CERD, but it will depend on whether the applicant state is invoking diplomatic protection or its own rights under CERD.

If Qatar was seizing the CERD Committee or invoking diplomatic protection generally, then exhaustion would clearly apply.¹⁵⁴ This requirement is a necessary precondition for a claim by an individual to elevate to the international plane.¹⁵⁵ It appears that the ICJ interpreted Ukraine’s approach to be diplomatic protection. But it is not clear that Qatar is claiming diplomatic protection.¹⁵⁶

150. See CERD, art. 22.

151. See CERD, art. 11.

152. See *infra*.

153. See Application Of the Int’l Convention For the Suppression Of the Fin. of Terrorism & of the Int’l Convention On the Elimination Of All Forms of Racial Discrimination (Ukr. v. Russ.), Preliminary Objections, Judgment, ¶ 129 (Nov. 8, 2019), <https://www.icj-cij.org/files/case-related/166/166-20191108-JUD-01-00-EN.pdf> [hereinafter (Ukr. v. Russ., Preliminary Objections)]; Interhandel (Switz. v. U.S.), Preliminary Objections, Judgment, 1959 I.C.J. Rep. 6, 29 (Mar. 21), <https://www.icj-cij.org/public/files/case-related/34/034-19590321-JUD-01-00-EN.pdf>; ELSI (U.S. v. It.), *supra* note 143 ¶ 50; Ahmadou Sadio Diallo (Guinea v. Dem. Rep. Congo), Preliminary Objections 2007 I.C.J. Rep. 582, ¶ 42 (May 24), <https://www.icj-cij.org/public/files/case-related/103/103-20070524-JUD-01-00-EN.pdf>.

154. See CERD, art. 11.

155. See *id.*

156. See *infra*.

Qatar made its claim under CERD before the ICJ “in its own right and as *parens patriae* of its citizens.”¹⁵⁷ It is not completely clear what it intends by *parens patriae*, whether that is the exercise of diplomatic protection, or measures of protection not involving a claim of diplomatic protection. *Parens patriae* has not gone unnoticed by other tribunals as a concept, although not necessary as an issue in international law.¹⁵⁸ The Draft Articles on Diplomatic Protection do not make use of the term at all.¹⁵⁹

The ICJ has received claims by states to act *parens patriae* before, and its jurisprudence on that type of claim appears to distinguish it from diplomatic protection.¹⁶⁰ In the *Georgia v. Russia CERD* case, Georgia submitted its claim partly as *parens patriae*, though the ICJ did not adjudicate on that particular part of the claim.¹⁶¹ In the *Croatia v. Serbia Genocide* case, Croatia also made the claim of *parens patriae*, in addition to claiming its own rights, and Serbia never raised the exhaustion of domestic remedies claim of admissibility.¹⁶² This is surprising because Serbia raised other claims of admissibility and the Court expressly referred to the exhaustion of domestic remedies as a possible ground for admissibility, though it was not present in the case.¹⁶³ The Court proceeded to adjudicate on the merits without

157. *Qatar v. U.A.E.*, Provisional Measures (June 11, 2018), *supra* note 11, ¶ 19; *Qatar v. U.A.E.*, Verbatim Record (June 28, 2018, 10:00 a.m.), *supra* note 142, at Treves, ¶ 2.

158. *See e.g.*, *S.K. v. U.K.*, App. No. 11468/85, (Eur. Comm’n Hum. Rts, Oct. 15, 1986); *M.M. v. U.K.*, App. No. 13228/87, (Eur. Comm’n Hum. Rts, Feb. 13, 1990).

159. *See generally* ILC *Draft Articles on Diplomatic Protection*, *supra* note 142.

160. *See infra*.

161. *See* *Geor. v. Russ.*, Preliminary Objections, Judgment, 2011 I.C.J. Rep., ¶ 16 (Apr. 1), <https://www.icj-cij.org/public/files/case-related/140/140-20110401-JUD-01-00-EN.pdf>; *see also id.*, ¶ 185 (dismissing case on the Russian preliminary objection without ruling on the merits of the *parens patriae* claim).

162. *See* Application of the Convention On the Prevention & Punishment Of the Crime of Genocide (*Croat. v. Serb.*), Preliminary Objections, Judgment, 2008 I.C.J. Rep. 412, ¶ 120 (Nov. 18), <https://www.icj-cij.org/public/files/case-related/118/118-20081118-JUD-01-00-EN.pdf>

163. *See* Application Of the Convention On the Prevention & Punishment Of the Crime of Genocide (*Croat. v. Serb.*), Preliminary Objections, Judgment, 2008 I.C.J. Rep. 412, ¶ 120 (Nov. 18), <https://www.icj-cij.org/public/files/case-related/118/118-20081118-JUD-01-00-EN.pdf> (“Essentially such an objection [on admissibility] consists in the contention that there exists a legal reason, even when there is jurisdiction, why the Court should decline to hear the case,

the need for exhaustion.¹⁶⁴ Similarly, in the *Bosnia v Serbia Genocide* case, the claim of exhaustion of domestic remedies was not submitted or maintained, even though Bosnia claimed to be acting in its own right and as *parens patriae*.¹⁶⁵ In the *Rwanda v DRC Armed Activities new application* case, the DRC claimed violations of the law and reparations in its own rights and *parens patriae*, the Court dismissed the case for lack of consent to jurisdiction, and did not examine whether domestic remedies had been exhausted.¹⁶⁶

When used at the ICJ, the expression “*parens patriae*” appears to be a claim for the rights of individuals as distinct from the rights of the state.¹⁶⁷ As such, it resembles diplomatic protection and the exhaustion of domestic remedies would seem to be the natural requirement.¹⁶⁸ It is therefore unexpected that the Court has never required the exhaustion of domestic remedies for a *parens patriae* claim.¹⁶⁹ It might be explained that exhaustion is

or more usually, a specific claim therein. Such a reason is often of such a nature that the matter should be resolved *in limine litis*, for example where without examination of the merits it may be seen that there has been a ... failure to exhaust local remedies”).

164. *See generally* Application Of the Convention On the Prevention & Punishment Of the Crime of Genocide (Croat. v. Serb.), Advisory Opinions, 2015 I.C.J. Rep. 3 (Feb. 3), <https://www.icj-cij.org/public/files/case-related/118/118-20150203-JUD-01-00-EN.pdf>.

165. *See* Application Of the Convention On the Prevention & Punishment Of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. Rep. 43, ¶ 459 (Feb. 26), <https://www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf> (“The Applicant, in its final submissions, has asked the Court to decide that the Respondent ‘... must pay, and Bosnia and Herzegovina is entitled to receive, in its own right and as *parens patriae* for its citizens, full compensation for the damages and losses caused ...”).

166. *See* Armed Activities On the Territory Of the Congo (Dem. Rep. Congo v Rwanda), Provisional Measures, 2002 I.C.J. Rep. 219 (July 10), ¶ 13, <https://www.icj-cij.org/public/files/case-related/126/126-20020710-ORD-01-00-EN.pdf> (“Whereas at the close of its request the Congo States: ... the Democratic Republic of the Congo [DRC] ... requests the Court to order the following provisional measures :... Rwanda must pay to the DRC, in the latter’s own right and as *parens patriae* of its citizens, fair and just reparation on account of the injury to persons, property, the economy and the environment as a result of the above-mentioned violations of international law...”).

167. *See infra*.

168. *See generally* ILC Draft Articles on Diplomatic Protection, *supra* note 142.

169. *See* Application of the Convention On the Prevention & Punishment Of the Crime of Genocide (Croat. v. Serb.), Advisory Opinions, 2015 I.C.J. Rep. 3

not required because the *parens patriae* claim is accompanied by a claim for a violation of the state's own rights, for which exhaustion is not required.¹⁷⁰ Therefore, it serves no purpose to demand exhaustion. But the obligation is well grounded in international law as a bar to the admissibility of a claim;¹⁷¹ it would be quite surprising to have this issue so easily overlooked. Another possibility is that the Court is implicitly dismissing all of the *parens patriae* claims and adjudicating only the state's own right. Again, such a decision to dismiss a claim protecting an individual's rights without comment would be quite surprising. The better understanding is that the state is claiming a violation of international law owed to it, motivated by the affront to its dignity and motivated by its desire to assist its nationals as *parens patriae*. Therefore, in line with the findings of the Special Rapporteur and Cançado Trindade's arguments, these do not amount to diplomatic protection claims and exhaustion of domestic remedies should not apply.

Protection of a natural or legal person does not always amount to diplomatic protection.¹⁷² While a state can take measures that benefit an injured person, those measures need not necessarily invoke the specific right of diplomatic protection.¹⁷³ The Special Rapporteur on Diplomatic Protection, John Dugard, observed that the draft articles on diplomatic protection were not intended to affect the rules for protection under, e.g. a human rights treaty or other means of redress for violations of human rights.¹⁷⁴ The Special Rapporteur noted that many human rights treaties provide the state of nationality the right to protect its

(Feb. 3), <https://www.icj-cij.org/public/files/case-related/118/118-20150203-JUD-01-00-EN.pdf>; Application Of the Convention On the Prevention & Punishment Of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. Rep. 43, ¶ 459 (Feb. 26), <https://www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf>; Armed Activities On the Territory Of the Congo (Dem. Rep. Congo v Rwanda), Provisional Measures, 2002 I.C.J. Rep. 219 (July 10), ¶ 13, <https://www.icj-cij.org/public/files/case-related/126/126-20020710-ORD-01-00-EN.pdf>

170. See generally ILC Draft Articles on Diplomatic Protection, *supra* note 142.

171. See generally ILC Draft Articles on Diplomatic Protection, *supra* note 142.

172. See ILC Draft Articles on Diplomatic Protection, *supra* note 142, at art. 16.

173. See *infra*.

174. See ILC Draft Articles on Diplomatic Protection, *supra* note 142, at art. 16, cmt. (1).

nationals by filing inter-state disputes, and he expressly referred to the CERD, among other treaties.¹⁷⁵

In addition, measures that have protective effect need not qualify as diplomatic protection when a state is invoking its own rights as a treaty partner. The Special Rapporteur noted that the Draft Articles on State Responsibility provided that a state can protect non-nationals “if the obligation breached is owed to the international community as a whole, without complying with the requirements for the exercise of diplomatic protection.”¹⁷⁶ Surely if a state can invoke an *erga omnes* rule for protecting a non-national without invoking diplomatic protection, then it can do the same for a national. Of course, racial discrimination is an obligation owed *erga omnes*.¹⁷⁷

There are some indications that this line of argument may ultimately be successful. Judge Cançado Trindade quite correctly argued against the need to exhaust domestic remedies in the *Ukraine v. Russia ICFST/CERD* case.¹⁷⁸ Following the logic of the Special Rapporteur on Diplomatic Protection, he noted that when a state violates a treaty and commits an internationally wrongful act, and when another state invokes that responsibility with an inter-state complaint, that complaint is not subject to

175. See *id.* at art. 16, cmt. (2)

176. See *id.* (citing the Int’l Law Comm’n, *Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries*, Rep. on the Work of Its Fifty-Third Session, art. 48, cmt. (7), n.725, U.N. Doc. A/56/10 (2001)); cf. *South West Africa, Second Phase* (Eth. v. S. Afr.; Liber. v. S. Afr.), Judgment, 1966 I.C.J. Rep. 6 (July 18), <https://www.icj-cij.org/public/files/case-related/47/047-19660718-JUD-01-00-EN.pdf>; *Armed Acts. On the Territory Of the Congo (Dem. Rep. Congo v. Uganda)*, Judgment, 2005 I.C.J. Rep. 168, ¶¶ 35–41 (Dec. 19) (Simma, J. separate opinion), <https://www.icj-cij.org/public/files/case-related/116/116-20051219-JUD-01-05-EN.pdf>.

177. See *Barcelona Traction, Light & Power Co., Ltd., Second Phase* (Belg. v. Spain), Judgment, 1970 I.C.J. Rep. 3, ¶¶ 33–34 (Feb. 5), <https://www.icj-cij.org/public/files/case-related/50/050-19700205-JUD-01-00-EN.pdf> [hereinafter *Barcelona Traction case* (Belg. v. Spain)]; see also *Qatar v. U.A.E.*, , Verbatim Record (June 27, 2018, 10:00 a.m), *supra* note 13 at Amirfar, ¶ 6 (“Indeed, this Court has recognized the protection against racial discrimination as an obligation *erga omnes*, which ‘in view of its importance’, is the ‘concern of all States’, and thus all States can be held to have a legal interest in its protection.”).

178. See *Ukr. v. Russ.*, Preliminary Objections, *supra* note 153 (Cançado Trindade, J., separate opinion) ¶ 31, <https://www.icj-cij.org/files/case-related/166/166-20191108-JUD-01-03-EN.pdf> (“local remedies rule in human rights protection is certainly distinct from its application in the practice of diplomatic protection of nationals abroad”).

the exhaustion rule.¹⁷⁹ He reaffirmed that argument in the *Qatar v UAE CERD* case first provisional measures order, though he had to include that argument in a separate opinion.¹⁸⁰ In addition, in the *Armenia v Azerbaijan CERD* case, Armenia requested provisional measures to protect individuals with Armenian national or ethnic origin, not specifically its own nationals, and the Court granted the request.¹⁸¹ Thus, the Court has already signaled that a claim may be made on behalf of individuals where there is not necessarily a link of citizenship.¹⁸² In turn, such a claim could not constitute diplomatic protection and would not necessitate exhaustion.

Returning to the concern over the nature of the person enjoying the protected rights, if the *parens patriae* protection is not diplomatic protection, then the protection would not need to establish nationality or the link to the state along the lines of *Nottebohm*¹⁸³ or *Barcelona Traction*.¹⁸⁴ The claim for violation of the CERD would only require showing that a protected person was

179. See *id.* ¶ 37 (“In the present case, Ukraine, instead of protecting nationals, complains of an alleged internationally wrongful act of the respondent State against it, in breach of the CERD Convention. As such, it cannot be litigated in domestic courts of another State, and the local remedies rule does not apply.”); *id.* ¶ 38

It is clear that individual rights are here also at stake, and human rights treaties such as the CERD Convention protect them to the benefit of the human persons concerned. But a breach of the CERD Convention also entails the commission of an internationally wrongful act by a State, and here the Convention’s enforcement does not require the application of the rule of exhaustion of local remedies. In the *cas d’espèce*, Ukraine points out that it does bring its claim on behalf of the individuals concerned, but rather in its own right; as a result, the respondent State’s preliminary objection of alleged non-exhaustion of local remedies does not stand and has been rightly dismissed by the ICJ.

180. See *Qatar v. U.A.E.*, 2018 I.C.J. 406, 438, ¶ 10 (July 23) (separate opinion by Cançado Trindade, J., sep. op.) (“the applicable law is a human rights Convention, and not at all diplomatic protection rules.”).

181. See *Arm. v. Azer.*, Provisional Measures, *supra* note 125, ¶¶ 46, 60.

182. See *id.* ¶ 60 (“the Court finds plausible the right of such persons not to be subjected to inhuman or degrading treatment based on their national or ethnic origin while being detained by Azerbaijan.”).

183. See *Nottebohm*, Second Phase (*Liech. v. Guat.*), Judgment, 1955 I.C.J. Rep. 4 (Apr. 6), <https://www.icj-cij.org/public/files/case-related/18/018-19550406-JUD-01-00-EN.pdf>.

184. See *Barcelona Traction* case (*Belg. v. Spain.*), *supra* note 177.

mistreated.¹⁸⁵ Therefore, the full scope of the claim would not be limited to nationals or private corporations incorporated in the state, but would include any person who might benefit from rights under the CERD, including state-owned corporations, provided the CERD can be shown to grant rights to those persons. That being said, Qatar has limited its request to injuries to Qatari nationals.¹⁸⁶

In addition to the *parens patriae* argument, Qatar is also claiming its own rights.¹⁸⁷ Qatar's argument is that the UAE may be violating its obligations in the CERD owed to Qatar that it will not engage in prohibited discrimination against anyone. As such, this claim is distinct from claims held by its nationals for suffering mistreatment. UAE has argued in reply that the CERD does not afford a direct right to states to claim violations,¹⁸⁸ but this is in direct contradiction to the text and jurisprudence on the CERD.¹⁸⁹ In the *Ukraine v Russia ICSFT/CERD* case, the ICJ recognized that Ukraine had its own rights under the CERD to complain against Russia under article 22.¹⁹⁰ In this type of claim, the Court recognized that exhaustion does not apply.¹⁹¹ Qatar has an *erga omnes* right under the CERD¹⁹² that the UAE and the other parties to the CERD

185. See CERD, art. 11.

186. See generally Application of the Int'l Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. U.A.E.), Preliminary Objections, Judgment, 2011 ICJ Reps (Feb. 4), <https://www.icj-cij.org/public/files/case-related/172/172-20210204-JUD-01-00-EN.pdf>

187. See *infra*.

188. See Qatar v. U.A.E. Verbatim Record (June 29, 2018, 4:30 p.m.), *supra* note 152 at Treves, ¶ 11 ("No such direct rights of the State are at issue in these proceedings.") (citing LaGrand case (Germ. V. U.S.), *supra* note 146 at para. 74)).

189. See CERD, art. 14.

190. See Ukr. v. Russ., Preliminary Objections, *supra* note 153 ¶ 130 ("...in filing its Application under Article 22 of CERD, Ukraine does not adopt the cause of one or more of its nationals, but challenges, on the basis of CERD, the alleged pattern of conduct of the Russian Federation with regard to the treatment of the Crimean Tatar and Ukrainian communities in Crimea. In view of the above, the Court concludes that the rule of exhaustion of local remedies does not apply in the circumstances of the present case.").

191. See *id.*

192. See Barcelona Traction case (Belg. v. Spain), *supra* note 177, ¶¶ 33–34; see also Qatar v. U.A.E., Verbatim Record (June 27, 2018, 10:00 a.m.), *supra* note 13 at Amirfar, ¶ 6 ("Indeed, this Court has recognized the protection against racial discrimination as an obligation *erga omnes*, which 'in view of its

will not engage in prohibited discrimination.¹⁹³ There is no rule in international law that a state cannot claim the violation of its rights in an international treaty unless it has located specific individuals affected by the violation and exhausted their domestic remedies.

Thus, if Qatar is making a diplomatic protection claim, then it must show exhaustion of domestic remedies, but if Qatar is asserting a violation of its own rights under the CERD or a violation of the CERD with detrimental effects on Qataris, Qatar need not show exhaustion of domestic remedies.

If the CERD does not properly call for the exhaustion of domestic remedies for inter-state claims, because it is excluded by the Convention as a requirement, then the Convention appears to view inter-state claims as states asserting their rights to call out another state for violating the Convention. A claim that another state has violated the Convention presumes that there is a violation to call out. A violation could only exist if there was an entity whose rights were violated. Therefore, the exclusion of the exhaustion requirement for inter-state complaints implies that there may be a range of actors that bear rights under the CERD that is not limited to those who can exhaust rights. Of course, if it is a state entity, then does it need to exhaust domestic remedies.

C. Identifying Who Holds Rights Under the CERD

There is a more fundamental question than admissibility: whether Al Jazeera or other actors even enjoy human rights protections in the first place.

The CERD provides that states will not engage in racial discrimination against "persons, groups of persons or institutions."¹⁹⁴ In detailing some of the specific rights that are covered by the nondiscrimination obligation, the CERD specifies that

importance', is the 'concern of all States', and thus all States can be held to have a legal interest in its protection.").

193. See CERD, art. 11.

194. CERD, art. 2(1) ("States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation...").

these rights are enjoyed by “everyone,”¹⁹⁵ and that the right to freedom of opinion and expression is specifically covered for “everyone.”¹⁹⁶ The language in the ECHR is quite similar, providing that “everyone” enjoys certain rights.¹⁹⁷

1. Persons

Certainly “persons”¹⁹⁸ qualify as “everyone.”¹⁹⁹ Qatar has phrased its claims for the closure of Al Jazeera as a discriminatory act to sound like claims for violating the rights of individuals.²⁰⁰ In the first provisional measures order, the Court ordered relief for individuals, affirming that individuals are covered.²⁰¹ The UAE countered that more than Qatari nationals are affected.²⁰² In reply, Qatar responded that the full scope of

195. *See id.* art. 5 (“In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights...”); *see also id.* art. 6.

196. *See id.* art. 5(d)(viii).

197. *See* ECHR, art. 6(1) (“In the determination of his civil rights and obligations . . . everyone is entitled to a fair . . . hearing . . . by [a] . . . tribunal . . .”); *see id.*, art. 13 (“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”).

198. *See* CERD, art. 2.

199. *See id.* at arts. 5, 6.

200. *See* Application of the Int’l Convention On the Elimination Of All Forms of Racial Discrimination (Qatar v. U.A.E.), Verbatim Record, 2019 I.C.J., at Al-Khulaifi, ¶ 16 (May 8, 2019, 10:00 a.m.), <https://www.icj-cij.org/files/case-related/172/172-20190508-ORA-01-00-BI.pdf> [hereinafter Qatar v. U.A.E., Verbatim Record (May 8, 2019, 10:00 a.m.) (closure of Al Jazeera is “UAE’s campaign of incitement of racial hatred against Qataris”); *see also* Qatar v. U.A.E., Provisional Measures (June 11, 2018), *supra* note 11, ¶ 19(a)(iv); Qatar v. U.A.E., Verbatim Record (June 29, 2018, 10:00 a.m.), *supra* June note 52 at Al-Khulaifi, ¶ 7(a)(iv).

201. *See* Qatar v. U.A.E., Provisional Measures (June 11, 2018), *supra* note 11.

202. *See* Qatar v. U.A.E., Verbatim Record (June 28, 2018, 10:00 a.m.), *supra* note 142, at Olleson, ¶ 65 (“Conversely, in so far as the blocking of transmissions might be argued to interfere with the rights of individuals within the UAE, this necessarily affects *all* individuals within the UAE who might otherwise have wished to listen to or watch those transmissions. They thus cannot be characterized as discriminatory, whether on the basis of “national origin”, or otherwise.”).

application is not significant, if persons are affected on a discriminatory basis.²⁰³ Certainly the employees of Al Jazeera may qualify as affected individuals, but also the general Qatari public, who also have a right to receive broadcasts on a non-discriminatory basis.²⁰⁴

2. Groups of Persons

Whether a group of individuals holds rights under the CERD requires another step of analysis. The CERD provides that “groups of persons” do indeed hold rights.²⁰⁵ This category of “groups” is phrased identically in the sections on rights and the section on standing before the CERD Committee.²⁰⁶ The term might have a similar meaning here, but avoiding such an analogy is necessary. For example, in order for a group to have standing when it was not itself a victim, it would need to include at least one person who was a victim,²⁰⁷ but that suggests that a group does not hold the right against discrimination until one of its members was mistreated. Surely, the group held the right before the mistreatment. That reading is more consistent with the terms of the Convention. The better interpretation is that the rules on standing, requiring at least one victim in order for a group to be directly and personally affected,²⁰⁸ cannot function as a limitation on the holder of rights. When a group is not itself

203. See *Qatar v. U.A.E.*, Verbatim Record (June 29, 2018, 10:00 a.m.), *supra* note 52 at Amirfar, ¶ 17; Comm. On the Elim. Of Racial Discrim., Gen. Recomm. XXX on Discrimination Against Non-Citizens, U.N. Doc. CERD/C/64/Misc.11/rev/3 (2004), para. 12; citing *Unacceptable Call for Al Jazeera's Closure in Gulf Crisis*, REPS. WITHOUT BORDERS (June 28, 2017), <https://rsf.org/en/news/unacceptable-call-al-Jazeeras-closure-gulf-crisis> [hereinafter Reporters W/o Borders, *Unacceptable Call*]; Amnesty Int'l, *Families ripped apart, freedom of expression under attack amid political dispute in Gulf* (9 June 2017), <https://www.amnesty.org/en/latest/news/2017/06/families-ripped-apart-freedom-of-expression-under-attack-amid-political-dispute-in-gulf/>

204. See *De Geillustreerde Pers N.V. v. Neth.*, App. No. 5178/71, ¶ 86; see also *Lingens v. Austria*, App. No. 9815/82 at ¶ 41; *Verein gegen Tierfabriken v. Switz.*, 2001-VI Eur. Ct. H.R. at 264–65; *Centro Europa 7 S.r.l. & Di Stefano v. It.*, 2012-III Eur. Ct. H.R. at 386.

205. See CERD, art. 2.

206. See CERD, art. 14(2)

207. See, e.g., *Jewish Cmty. V. Nor.*, *supra* note 70, ¶ 7.4; Doc. & Adv. Ctre v. Den., *supra* note 68, ¶ 6.4.

208. See Doc. & Adv. Ctre v. Den., *supra* note 68, ¶ 6.4; cf. *Admissibility, A.S. v. Russ.*, *supra* note 68, ¶ 7.2.

harmed, it can nonetheless represent victims in making a claim. This is the correct interpretation because the CERD committee requires that, in order for the group to represent the victim, it must also be authorized to do so.²⁰⁹ Thus, it does not have an inherent right to be a victim.²¹⁰

3. Legal Persons

It is not controversial to assert that “everyone” includes “persons” or “groups of persons,” because both of those categories are expressly authorized by the CERD.²¹¹ The more problematic question is whether “everyone” also covers legal persons, such as corporations, and governmental or quasi-governmental bodies as “groups of persons” or “institutions.”²¹²

i. Legal Persons as Individuals

Different human rights treaties take varying approaches to legal persons bearing rights.²¹³ The ICCPR excludes legal persons from enjoying the rights in the Covenant.²¹⁴ The AmCHR, which provides that corporations have standing before the Commission, does not extend rights of victimhood to those legal persons, because the terms are limited to “every human being.”²¹⁵ The African Charter seems to provide that legal persons can be victims,²¹⁶ including, in one case, several newspaper companies.²¹⁷ The Special Tribunal for Lebanon, in interpreting and applying

209. See *Doc. & Adv. Ctre v. Den.*, *supra* note 68 ¶ 6.4; *Jewish Cmty. v. Nor.*, *supra* note 70, ¶ 7.4; *Zentralrat v Ger.*, *supra* note 69, ¶ 7.2.

210. See *Doc. & Adv. Ctre v. Den.*, *supra* note 68 ¶ 6.4; *Jewish Cmty. v. Nor.*, *supra* note 70, ¶ 7.4; *Zentralrat v Ger.*, *supra* note 69, ¶ 7.2.

211. See CERD, art. 14(2).

212. See CERD, art. 2.

213. See *infra*.

214. See Hum. Rts. Comm., Gen. Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, ¶ 9, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (Mar. 29, 2004) [hereinafter HRC, Gen. Comm. No. 3].

215. See *Cantos v. Arg.*, Judgment, Inter-Am. Ct. H.R., ¶¶ 22–29 (Sept. 7, 2001); *Perozo v. Venez.*, Judgment, Inter-Am. Ct. H.R., ¶¶ 74, 399 (Jan. 28, 2009).

216. See *Civ. Libs. Org. v. Nigeria*, Commc’n 101/93, Afr. Comm’n Hum. & People’s Rts., [Afr. Comm’n H.P.R.], ¶ 6(1995) (implicitly accepting the legal person by not raising an objection and accepting the claim as admissible); see also *Con. Rts Proj. et al. v. Nigeria*, *supra* note 80, ¶ 37.

217. See *Art. 19 v. Eritrea*, *supra* note 40.

international criminal law, reasoned that there was no *a priori* reason for excluding legal persons from criminal provisions covering persons generally.²¹⁸

A strictly textual interpretation of the CERD suggests that it could cover legal persons under “everyone.” “Everyone” is a very broad term that resists limitation. In addition to including persons, groups of persons, and institutions as protected classifications, the same article in the CERD also prohibits racial discrimination “in all its forms”²¹⁹ and “wherever it exists.”²²⁰ “Groups of persons” is listed distinctly from “persons,” in the CERD so there must be some meaning stemming from that distinction. If the CERD distinguishes between persons and persons in a singular group, then the fact they are grouped must have some significance. Surely the incorporation of the group as a legal person would give recognition to the group, just as the grouping in the CERD also has meaning.

In interpreting these terms, we can consider the context of the words. According to the preamble of the CERD, the overall motivation for the Convention is protection of human beings.²²¹

218. See New T.V. S.A.L. & Karma Mohamed Tashin Al Khayat, Case No. STL-14-05/PT/AP/AR126.1, Decision on Interlocutory Appeal Concerning Personal Jurisdiction in Contempt Proceedings, ¶ 60 (Oct. 2, 2014) Al Jadeed [Co.] S.A.L./New T.V. S.A.L. (N.T.V.) & Karma Mohamed Tashin Al Khayat, Case No. STL-14-05/A/AP, Judgment (Appeals Panel, Mar. 8, 2016); Akhbar Beirut S.A.L. & Ibrahim Mohamed Ali Al Amin, Case No. STL-14-06/T/CJ, Judgment (July 15, 2016).

219. CERD, arts. 2(1), 5.

220. *Id.* art. 2(1)I (“Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists...”).

221. See *id.* pmbl:

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings . . . Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin . . . Considering that all human beings are equal before the law . . . Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of

Moreover, the preamble makes implicit reference to “peoples,”²²² suggesting that groups of individuals are also covered. In the substantive provisions, the terms clearly contemplated groups of persons, sharing the same protected characteristics.²²³

The initial section of the Convention does not refer to legal persons. Even after the Convention notes that “everyone” is protected, most of the rights that are listed are only capable of being enjoyed by individuals.²²⁴ The listed rights appear to be aimed at individuals, not corporations.²²⁵ For example, the CERD includes the rights of equal treatment before the tribunals,²²⁶ security of person,²²⁷ voting and candidacy,²²⁸ freedom of movement,²²⁹ right to leave any country,²³⁰ right to nationality,²³¹ right to marriage,²³² right to freedom of thought, conscience and

securing understanding of and respect for the dignity of the human person ... Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State

222. *See id.* (“Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith”).

223. *See id.* art. 1(4):

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved;

see also id. at art. 2(2) (“States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them...”).

224. *See infra.*

225. *See infra.*

226. CERD, art. 5(a).

227. *Id.* art. 5(b).

228. *Id.* art. 5(c).

229. *Id.* art. 5(d)(i).

230. *Id.* art. 5(d)(ii).

231. *Id.* art. 5(d)(iii).

232. *Id.* art. 5(d)(iv).

religion,²³³ free choice of employment and favorable conditions of work,²³⁴ right to join trade unions,²³⁵ right to housing,²³⁶ right to health care,²³⁷ right to education,²³⁸ cultural participation,²³⁹ and right of access to public spaces and services.²⁴⁰ The CERD certainly sounds as if it only protects individuals.

This conclusion does not mean that none of the protected rights could be held by legal persons. Some of the rights listed that could be enjoyed by corporations include the right to own property,²⁴¹ right to inherit,²⁴² and right to freedom of peaceful assembly and association,²⁴³ as well as the right at issue in this Article: the right to freedom of opinion and expression.²⁴⁴ Some rights, such as protections against segregation and apartheid,²⁴⁵ might appear at first glance to only apply to individuals, could nonetheless apply to legal persons. For example, a corporation might be excluded from participating in the market or providing goods and services, as a proxy for discrimination against the corporation's perceived link to a protected characteristic. In any event, it is also difficult to see how those same rights would be held by "groups of persons or institutions,"²⁴⁶ and yet the CERD specifically covers those actors.²⁴⁷ For example, how can a group or an institution hold the right to security of person, freedom of movement, or the right to nationality? The fact that the CERD expressly grants those rights to groups, means that they must have the capacity to bear them.

As noted above, in the *Preliminary Objections Judgment*, the ICJ determined that the CERD protected "national origin," not "nationality," but offered little to resolve whether a legal person

233. *Id.* art. 5(d)(vii).

234. *Id.* art. 5(e)(i).

235. *Id.* art. 5(e)(ii).

236. *Id.* art. 5(e)(iii).

237. *Id.* art. 5(e)(iv).

238. *Id.* art. 5(e)(v).

239. *Id.* art. 5(e)(vi).

240. *Id.* art. 5(f).

241. *See id.* art. 5(d)(v).

242. *See id.* art. 5(d)(vi).

243. *See id.* art. 5(d)(ix).

244. *See id.* art. 5(d)(viii),

245. *See id.* art. 3 ("States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.").

246. *Id.* art. 2(1)(a).

247. *See id.*

would qualify as a person for purposes of CERD rights.²⁴⁸ The Court's conclusion on nationality and national origin might suggest that legal persons cannot enjoy rights under the CERD, but the ICJ avoided reaching a conclusion on that precise point.²⁴⁹ The Court's reasoning that the CERD only applied to natural persons relied on the logic that the CERD was drafted to protect immutable and inherent characteristics, but this reasoning could also support an argument that rights adhere to legal persons. The Court only rejected the changeable legal bond of citizenship as prohibited discrimination under the CERD.²⁵⁰ The application of the Court's views, therefore, is merely whether a legal person can be said to have nationality or national origin in the sense of the CERD.

In the *Armenia v Azerbaijan CERD* case, Armenia claimed CERD violations by Azerbaijan that impacted churches of Armenian tradition as cultural sites.²⁵¹ Setting aside for the moment the question of whether these particular cultural sites are incorporated persons, this claim does suggest some possibility for an entity, other than a natural person, to enjoy protection from discrimination. The Court granted the request for provisional measures, ordering that "Azerbaijan must . . . take all necessary measures to prevent and punish acts of vandalism and desecration affecting Armenian cultural heritage, including but not limited to churches and other places of worship, monuments, landmarks, cemeteries and artefacts."²⁵² In his dissent, Judge Yusuf protested that the Court should not have taken this step because churches do not enjoy human rights under CERD.²⁵³ It is,

248. See generally Application of the Int'l Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. U.A.E.), Preliminary Objections, Judgment, 2011 ICJ Reps (Feb. 4), <https://www.icj-cij.org/public/files/case-related/172/172-20210204-JUD-01-00-EN.pdf>

249. See *id.*

250. See *id.*

251. See *Arm. v. Azer.*, Provisional Measures, *supra* note 125 ¶¶50, 92.

252. See *id.* ¶ 92 ("The Court considers that, with regard to the situation described above, pending the final decision in the case, Azerbaijan must, in accordance with its obligations under CERD ... take all necessary measures to prevent and punish acts of vandalism and desecration affecting Armenian cultural heritage, including but not limited to churches and other places of worship, monuments, landmarks, cemeteries and artefacts.").

253. See *id.* (Yusuf, J., dissenting opinion) ¶. 13 ("In my view, there is no plausible right under CERD over the preservation of cultural heritage. Considerations of race and racial discrimination cannot and do not apply to monuments, groups of buildings, sites and artifacts. The provisions of CERD, which

however, not entirely clear whether Armenia argued that the churches, as such in their own capacity, enjoy rights under CERD. Instead, Armenia appears to have argued that individuals of Armenian ethnic or national origin have rights to their cultural heritage, of which the churches are an expression.²⁵⁴ Thus, it is difficult to extract a right of a cultural object to protection under the CERD from this order.

There is certainly space to argue that a legal person might have a nationality based on legal status, incorporation, registration or operation in a state. Furthermore, a nationality would be distinct from national origin based on the immutable facts of the place where the corporation was initially formed, the dominant national origin of its staff, representatives, directors or customers, or other basis for imputing an origin. This national origin might be quite different from its nationality. For example, the international corporation of IKEA is well-known to have a Swedish identity and origin, yet in actuality, it is a Dutch company, incorporated in the Netherlands.²⁵⁵ The musical group U2 presents a strong Irish heritage, however, it is also a Dutch corporation.²⁵⁶ Starbucks is a quintessential American company in

is an instrument on human rights, are intended to safeguard the basic rights and fundamental freedoms of human beings. Conversely, the protection of cultural monuments, religious sites and other buildings falls within the ambit of other instruments aimed at protecting these buildings and artifacts as the “cultural heritage of mankind” or on the basis of their historical, cultural and religious significance to States and to the national identity of their peoples.”).

254. See *id.* ¶ 50 (“Armenia also refers to the rights of persons of Armenian national or ethnic origin under Articles 2 and 5 of CERD to access and enjoy, without discrimination, their historic, cultural and religious heritage ... which, according to Armenia, entails a right to the protection and preservation of Armenian historic, cultural and religious heritage. ... Armenia further alleges that Azerbaijan, by carrying out what it calls restoration works on the cathedral of Shushi, has altered features characteristic of Armenian cultural heritage.”).

255. See *Flat-Pack Accounting*, THE ECONOMIST (May 11, 2006, updated July 18, 2006), <https://www.economist.com/business/2006/05/11/flat-pack-accounting> (“Although IKEA is one of Sweden’s best-known exports, it has not in a strict legal sense been Swedish since the early 1980s ... The parent for all IKEA companies—the operator of 207 of the 235 worldwide IKEA stores—is Ingka Holding, a private Dutch-registered company.”).

256. See Damien Gayle, *Bono Defends U2’s Tax Arrangements as ‘Sensible’*, THE GUARDIAN (May 15, 2015, 6:53 AM), <https://www.theguardian.com/music/2015/may/15/bono-defends-u2-corporation-tax-arrangements> (“U2 sparked a wave of criticism in 2006 by shifting parts of its business affairs from Ireland

origin, but when it was targeted for anti-American protests, the company was quick to draw the distinction between its national origin and its local incorporation, ownership and nationality.²⁵⁷ Similar considerations might apply to a media corporation, such as News Corporation with diverse assets historically throughout the world including *Fox News*, *The Times (London)*, the *Wall Street Journal*, and *Sky News Australia*, among other owned subsidiaries.²⁵⁸ As a result, these assets may have fragmented national origin and nationality identities. While the ICJ judgment might provide some assistance in disentangling national origin from nationality, it does not clarify whether a legal person might be included in the “everyone” category for purposes of the CERD.

ii. *Legal Persons as Groups of Persons*

The CERD Committee has interpreted the Convention to cover legal persons but has instead qualified legal persons as “groups of persons.”²⁵⁹ As suggested above, a group of persons can itself

to the Netherlands in response to a cap on tax breaks for artists in the republic.”).

257. See Natalie Schachar & Christine Murray, *Mexicans Target Starbucks in Boycott of American Firms over Donald Trump Policies*, THE INDEP. (Jan. 28, 2017, 12:47 PM), <https://www.independent.co.uk/news/world/americas/mexicans-target-starbucks-boycott-american-firms-donald-trump-policy-adiosstarbucks-a7550651.html> (“Seeking to quell a social media campaign imploring Mexicans to boycott US companies, Starbucks defended itself on Friday, saying it had invested millions in the country, created more than 7,000 jobs, and that its local unit is Mexican-owned. The statement came after disparate social media campaigns directed at US companies based in Mexico gained traction, following President Donald Trump’s order to build a border wall along the country’s southern border and promise to make Mexico pay for it.”).

258. See *Our Businesses and Brands*, NEWS CORP., <https://newscorp.com/news-corp-businesses-and-brands/>, (last visited on July 23, 2021). Fox News was spun off from News Corporation in 2013, see Dominic Rushe, *News Corp shareholders approve breakup plan*, THE GUARDIAN (Jun. 11, 2013) <https://www.theguardian.com/media/2013/jun/11/news-corp-shareholders-breakup-rupert-murdoch>, though it might be reintegrated in the future, see Dominic Rushe *et al.*, *Rupert Murdoch considering merging Fox and News Corp once again*, THE GUARDIAN (Oct. 14, 2022) <https://www.theguardian.com/media/2022/oct/14/rupert-murdoch-possible-fox-news-corp-merger>.

259. See *Zentralrat v. Ger.*, *supra* note 69, ¶ 7.2 (“The Committee does not consider the fact that two of the authors are organisations to be an obstacle to admissibility. Article 14 of the Convention refers specifically to the Committee’s competence to receive complaints from ‘groups of individuals’...”); see also *Opinion*, *TBB v. Germ.*, *supra* note 69, ¶¶ 11.3–11.4.

be the target of mistreatment as a group, rather than as the representative of certain victims.²⁶⁰ The CERD Committee has specifically held that a group can itself suffer discrimination.²⁶¹ Even though the legal person receives the mistreatment directly, and it would seem appropriate to qualify legal persons as persons, the Committee does not appear to do so. That being said, the CERD has not yet determined whether a corporation, such as a media company, would be a qualifying legal person in this category of a legal person as a group.

iii. Legal Persons as Institutions

In addition to persons and groups of persons, the CERD provides rights to “institutions,”²⁶² falling within the class of “everyone.”²⁶³ It is perhaps surprising that the CERD Committee did not find legal persons as falling under this category. Not only are “groups” distinct from “persons” in the Convention, but “institutions” are distinct from “groups,” suggesting that it is something quite different from a group. By way of comparison, the ECtHR places legal persons within the class of organizations, not persons or groups of persons, at least for purposes of admissibility.²⁶⁴ A possible explanation is that, even though institutions may benefit from rights under the CERD, they do not have standing. Legal persons might prefer to be classified as “groups of persons” under the CERD, rather than “institutions” so that they can also seize the Committee.

Continuing with the contextual analysis, we can also question whether the scope of the rights is implicitly limited by the rules governing which entities can bring a complaint. In principle, the Convention should be read as internally consistent.²⁶⁵ Surely

260. See *Doc. & Adv. Ctre v. Den.*, *supra* note 68, ¶ 6.4 (“The Committee does not exclude the possibility that a group of persons ... may submit an individual communication, provided that it is able to prove that it has been an alleged victim of a violation of the Convention ...”)

261. See *Jewish Cmty. v. Nor.*, *supra* note 70, ¶ 7.4; see also *Zentralrat v Ger.*, *supra* note 69, ¶ 7.2; *Opinion TBB v. Germ.*, *supra* note 69, ¶ 11.3.

262. See CERD, art. 2.

263. See *id.*

264. See *id.*

265. *Magyar Helsinki Bizottság v. Hung.*, App. No. 18030/11, ¶ 120 (Nov. 8, 2016), <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2016/11/CASE-OF-MAGYAR-HELSINKI-BIZOTTS%C3%81G-v.-HUNGARY.pdf> (“the Convention must also be read as a whole, and interpreted

the rights are meant to be practical, not “illusory,”²⁶⁶ so it serves no purpose to grant a right to an actor who cannot claim it. Recalling from the section above, the CERD Committee can receive complaints only from states²⁶⁷ or from “individuals or groups of individuals.”²⁶⁸ It does not include “institutions,” nor does it provide standing to “everyone.”²⁶⁹ “Groups” can be legal persons,²⁷⁰ as long as they are either directly affected,²⁷¹ or represent at least one victim.²⁷² This interpretation of legal persons falling under “groups” largely means that the CERD jurisprudence on standing begins to align with the ECHR jurisprudence, even though the ECHR expressly permits standing for “non-governmental organizations” in addition to groups.²⁷³ Furthermore, this express inclusion of non-governmental organizations has in turn been interpreted by the ECtHR to cover corporations, such as media companies,²⁷⁴ provided such corporations are non-governmental.²⁷⁵

in such a way as to promote internal consistency and harmony between its various provisions”).

266. *See* Artico v. It., App. No. 6694/74, ¶ 33 (Eur. Ct. Hum. Rts., May 13, 1980).

267. *See* CERD, art. 11(1).

268. *See id.* art. 14(1).

269. *See id.* arts. 11(1), 14(1).

270. *See* Zentralrat v. Ger., *supra* note 69, ¶ 7.2; *see also* Opinion, TBB v. Germ., *supra* note 69, ¶¶ 11.3–11.4.

271. *See* Doc. & Adv. Ctre v. Den., *supra* note 68, ¶ 6.4; *see generally* Jewish Cmty. v. Nor., *supra* note 70, ¶ 7.4; Zentralrat v. Ger., *supra* note 69, ¶ 7.2; *cf.*, A.S. v. Russ., *supra* note 68, ¶ 7.2; *see also* Opinion, TBB v. Germ., *supra* note 69, ¶ 11.3.

272. *See* Doc. & Adv. Ctre v. Den., *supra* note 68, ¶ 6.4; *see generally* Jewish Cmty. v. Nor., *supra* note 70, ¶ 7.4; Zentralrat v. Ger., *supra* note 69, ¶ 7.2.

273. *See* Times Newspaper v. U.K., *supra* note 85, at 95, ¶ 1; *see also* Ljubljanska Banka v. Croat., *supra* note 85, ¶ 50 (“a legal entity may lodge an individual application only if it may be regarded as a ‘non-governmental organisation’ within the meaning of Article 34 of the Convention...”).

274. *See* Times Newspaper v. U.K., *supra* note 85, at 95, ¶ 1.

275. *See* Consejo General v. Sp., *supra* note 95, at 153; *see also* RENFE v. Sp., *supra* note 95, at 182; Iran Shipping Lines v. Turk., *supra* note 95, at 349–50; Luganskvugillya v. Ukr., *supra* note 95, at 3; Transpetrol v. Slov., *supra* note 95, ¶ 60 (“... provided that it is a ‘non-governmental organisation’ within the meaning of Article 34 of the Convention and that the idea behind this principle is to prevent a Contracting Party acting as both an applicant and a respondent party before the Court...”); Ljubljanska Banka v. Croat., *supra* note 85, ¶ 51 (“‘non-governmental organisation’ ... is opposed to ‘governmental organisation’...”); Croat. Ch. Comm. v. Serb., *supra* note 95, ¶ 30.

This interpretation of using the rules on standing to limit the scope of the actors that bear rights is not satisfactory, because the CERD makes very careful distinctions between which entities have standing to bring complaints from those that enjoy rights.²⁷⁶ Similarly, in other sections of the CERD, the Convention also makes careful distinctions between holding rights and responsibility for violating rights.²⁷⁷ The Convention limits a state's obligations to only those persons within its jurisdiction, but it is critical to observe that this is a provision only for the scope of a state's role in ensuring nondiscrimination.²⁷⁸ It does not purport to limit the rights of everyone.²⁷⁹ "Everyone"²⁸⁰ holds rights against discrimination, not only those individuals involved in a state's jurisdiction.²⁸¹ Because the Convention makes these precise distinctions between standing to make a complaint, the scope of responsibility for respecting rights, and the nature of the entities that hold the rights, it does not stand to reason that the rules on standing should implicitly limit who holds rights. In any event, it is not the usual practice in international law for treaties providing rights to persons to necessarily limit the scope of application to only those actors who may have standing before an international tribunal.

In addition, the full implications of this approach would not be to limit the parties that hold rights, but to expand it dramatically. The CERD Committee has confirmed that legal persons can seize the Committee,²⁸² so legal persons must necessarily hold rights in some capacity, as either as groups or institutions.²⁸³ Moreover, states quite clearly can bring inter-state complaints.²⁸⁴ The text of the rules on standing suggest that states would necessarily hold rights under the CERD. This right at issue is not the right to exercise diplomatic protection over a national or the typical right of a treaty partner to claim a violation of the treaty, but the right of the state against becoming a victim

276. See CERD, arts 2, 11, 14.

277. See *infra*.

278. See CERD, art. 6. This wide scope of application is, in turn, limited to everyone within the state's jurisdiction. *Id.*

279. See *id.*

280. See *id.* arts. 5, 6.

281. See *id.*

282. See *supra* sec. III(B)(1)(i)(a); e.g. Jewish Cmty. v. Nor., *supra* note 70, ¶ 7.4.

283. See e.g. Doc. & Adv. Ctre v. Den., *supra* note 68, ¶ 6.4.

284. See CERD, art. 11.

of racial discrimination. Can we imagine a scenario where a state brings a claim against a state party to the CERD claiming that it wrongfully withheld international aid on racist grounds?²⁸⁵ This interpretation would be a surprising expansion of rights under the CERD. Surely the rules on standing are not intended to affect the scope of rights to this degree and are unlikely to be linked to the rules on which entities hold rights.

The next question, when it comes to the nature of the rights holder, is whether a group of persons can not only include legal persons, but specifically corporations. The ECtHR has interpreted the ECHR as providing rights to corporations, even though that precise coverage is provided in the ECHR.²⁸⁶ These rights for legal persons include freedom from discrimination²⁸⁷ and freedom of expression,²⁸⁸ especially the freedom of expression for media companies that, because of their role in society,

285. Consider whether the text of the CERD could be read to cover this kind of act of racist public policy against another state, if states held rights under the Convention. See CERD art. 2(1) (“States Parties . . . undertake to pursue . . . a policy of eliminating racial discrimination in all its forms . . . and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination . . . and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation . . . (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.”).

286. See ECHR, Protocol No. 1, art. 1 (“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”).

287. See ECHR, art. 14; see also *id.*, Protocol No. 12; *The Nat’l & Provincial Building Soc’y et al. v. U.K.*, App. Nos. 21319/93, 21449/93 & 21675/93, ¶¶ 85–86 (Eur. Comm’n Hum. Rts., June 25, 1996); *Religionsgemeinschaft der Zeugen Jehovas v. Austria*, App. No. 40825/98, ¶¶ 88, 99 (Eur. Ct. Hum. Rts., July 31, 2008).

288. See *The Sunday Times v. U.K.*, App. No. 6538/74, ¶¶ 44–68 (Eur. Ct. Hum. Rts., Apr. 26, 1979); *Vereniging Weekblad “Bluf” v. Neth.*, App. No. 16616/90, ¶¶ 25–46 (Eur. Ct. Hum. Rts., Feb. 9, 1995); *Ukr. Media Grp v. Ukr.*, App. No. 72713/01, ¶¶ 38–70 (Eur. Ct. Hum. Rts., Mar. 29, 2005); *Nordisk Film & TV A/S v. Den.*, 2005-XIII Eur. Ct. H.R. 251 (2005); *Kobenter & Std Verlags Gmbh v. Austria*, App. No. 60899/00, ¶¶ 22–23 (Eur. Ct. Hum. Rts., Nov. 2, 2006); *Sanoma Uitgevers B.V. v. Neth.*, App. No. 38224/03, ¶ 57 (Eur. Ct. Hum. Rts., Mar. 31, 2009); *Verein gegen Tierfabriken Schweiz (VgT) v. Switz.* (no. 2), 2009-IV Eur. Ct. H.R. 57, ¶¶ 78–98 (2009).

might even have a more robust protection than natural persons.²⁸⁹

iv. Conclusion on Legal Persons

In the case against the UAE, Qatar quite rightly complained about the mistreatment of Qatari nationals, but it also pointed to the potential for CERD violations against “Qatari media outlets.”²⁹⁰ In its view, media corporations, like Al Jazeera, would be protected under the category of “institutions.”²⁹¹ The UAE countered that corporations cannot be subjected to racial discrimination.²⁹² In granting the provisional measures requested by Qatar, but refusing measures on behalf of Al Jazeera, the Court appeared to avoid the question of protecting legal persons.²⁹³ In fact, Cançado Trindade, in his separate opinion to the provisional measures order, specifically argued that CERD rights are only enjoyed by natural persons.²⁹⁴

The Court should have concluded that the CERD covers media outlets such as Al Jazeera. The CERD Committee has recognized legal persons at least as “groups” and the additional availability

289. See *Christian Democratic People's Party v. Mold.*, 2006-II Eur. Ct. H.R. 97, ¶¶ 62–66 (2006); *Alithia Publ'n Co. Ltd. & Constantinides v. Cyprus*, App. No. 17550/03, ¶ 62 Eur. Ct. Hum. Rts., May 22, 2008).

290. *Qatar v. U.A.E.*, Provisional Measures (June 11, 2018), *supra* note 11 ¶ 19(a)(iv); see also *Qatar v. U.A.E.*, Verbatim Record (June 29, 2018, 10:00 a.m.), *supra* June note 52 at Al-Khulaifi, ¶ 7 (a)(iv).

291. See *Qatar v. U.A.E.*, Verbatim Record (June 29, 2018, 10:00 a.m.), *supra* note 19 at Amirfar, ¶ 17 (“Also, because the Convention prohibits racial discrimination against ‘persons, groups of persons or institutions’, it is not restricted to individuals and protects Qatari entities, like Qatari media outlets.”).

292. See *Qatar v. U.A.E.*, Verbatim Record (June 28, 2018, 10:00 a.m.), *supra* note 142 at Olleson, ¶ 64 (“Further, the relevant entities are corporations, not individuals, and so cannot themselves be subjected to racial discrimination.”); *id.* at Shaw, ¶ 37 (“CERD applies to individuals and not to corporations. Article 5 provides that States parties to the convention undertake to prohibit and eliminate racial discrimination and “guarantee to everyone without distinction as to race, colour or national or ethnic origin” equality before the law in the enjoyment of a specified range of rights. ... corporations as such are not beneficiaries of rights under this convention.”).

293. See generally *Qatar v. U.A.E.*, 2018 I.C.J. 406.

294. See *Qatar v. U.A.E.*, 2018 I.C.J. 406, 438, ¶ 94 (separate opinion by Cançado Trindade, J.) (“The present case of *Application of the CERD Convention*...concerns the rights protected thereunder, which are the rights of human beings, and not rights of States. The present request by the UAE of provisional measures, dismissed by the ICJ, does not invoke any of the human rights protected under the CERD Convention.”).

of the “institutions” category.²⁹⁵ Of course, the next step is determining the racial or ethnicity of a corporation. This Article does not address this difficulty, but an obvious solution can be to identify the race, ethnicity or protected characteristic imputed to the legal person. Legal persons who produce products targeting particular racial or religious groups might have clear imputed group membership, but even legal persons without objective membership might still have subjectively imputed membership.²⁹⁶ Practice in the future identifying the race or ethnicity of a corporation should follow existing cases of legal persons bringing claims before the CERD Committee.

Although this Article concludes that the CERD provides rights to corporations, even if it does not, a corporation might still be protected *de jure* or *de facto* because of its role in protecting individual rights.²⁹⁷ The ECtHR is reluctant to permit corporations to claim *de jure* the rights of their members or employees,²⁹⁸ although there are occasions in which this is allowed.²⁹⁹ One example of a permissible situation is when the treatment of a company affects its majority shareholder or owner.³⁰⁰ Otherwise, it would be simply artificial to make the distinction between a corporation and a person, such as with certain smaller businesses.³⁰¹ Generally, employees, rather than owners, cannot

295. See CERD, art 2(1); *Doc. & Adv. Ctre v. Den.*, *supra* note 68, ¶ 6.4.

296. Consider e.g., when well-known businesses such as Starbucks or McDonalds are targeted in anti-American or anti-international conflict, regardless of where the corporation is incorporated or does business, or who it employs. See *supra* notes 165–68.

297. See *infra*.

298. See *Ass’n. X et al. v Fr.*, App. No. 9939/82 (Eur. Comm’n Hum. Rts., July 4, 1983); *Sygounis, Kostis & Union of Police Officers v Greece*, App. No. 18598/91, at 71, 77 (Eur. Comm’n Hum. Rts., May 18, 1994).

299. See, e.g., *Agrotexim v. Greece*, App. No. 14807/89, ¶ 66 (Eur. Ct. Hum. Rts., Oct. 24, 1995); *Camberrow MM5 AD v. Bulg.*, App. No. 50357/99, ¶ 1 (Eur. Ct. Hum. Rts., Apr. 1, 2004); *Capital Bank AD v. Bulg.*, App. No. 49429/99, ¶ 1 (Eur. Ct. Hum. Rts., Sept. 9, 2004); *Ketko v. Ukr.*, App. No. 31223/03, (Eur. Ct. Hum. Rts., Oct. 14, 2008).

300. See *G.J. v. Lux.*, App. No. 21156/93, ¶ 24 (Eur. Ct. Hum. Rts., Oct. 26, 2000); *Glas Nadezhda EOOD & Elenkov v. Bulg.*, App. No. 14134/02, ¶ 40 (Eur. Ct. Hum. Rts., Oct. 11, 2007); *Khamidov v. Russ.*, App. No. 72118/01, ¶¶ 123–26 (Eur. Ct. Hum. Rts., Nov. 15, 2007).

301. See *Pine Valley Devs. Ltd. v. Ir.*, App. No. 12742/87, ¶ 42 (Eur. Ct. Hum. Rts., Nov. 29, 1991).

avail themselves of this option,³⁰² so they need to make their own claims or the company needs to show that it was a victim. Media companies, however, appear to be an exception because the company is necessary for the person to exercise his or her right to expression.³⁰³ Similarly, the ICCPR may permit a media company to claim the violation of its employees' freedom of expression.³⁰⁴ The AmCHR, on the other hand, does not permit this intermingling of rights of the natural and legal person.³⁰⁵ Even here, there are situations in which the mistreatment of a company is affected by mistreating its majority shareholder.³⁰⁶ An alternative is claiming the rights of individuals *de facto*. If the ICJ does not recognize a media outlet as enjoying CERD rights, then it can use the media outlet as a proxy or shorthand way of describing the employee individuals affected, following the precedent of *The Sunday Times v UK* at the ECHR.³⁰⁷

4. Government Bodies

The final question is whether government-owned or -controlled bodies can benefit from CERD rights. Although the CERD provides standing for the state in the form of an inter-state

302. See *Bayramov v. Azer.*, App. No. 23055/03, (Eur. Ct. Hum. Rts., Feb. 14, 2006); cf. *Meltex Ltd. & Movsesyan v. Arm.*, App. No. 32283/04, ¶ 66 (Eur. Ct. Hum. Rts., June 17, 2008); see also *Ketko v. Ukr.*, *supra* note 299.

303. See *Groppera Radio AG v. Switz.*, App. No. 10890/84, ¶¶ 46–51 (Eur. Ct. Hum. Rts., Mar. 28, 1990).

304. See HRC, Gen. Comm. No. 31, *supra* note 221, ¶ 9 (acceptable under the ICCPR “individuals from claiming that actions or omissions that concern legal persons and similar entities amount to a violation of their own rights”); cf. *S.M. v. Barb.*, H.R. Comm. U.N. Doc. CCPR/C/50/D/502/1992, ¶ 6.2 (1994); *Singer v. Can.*, H.R. Comm. U.N. Doc. CCPR/C/51/D/455/1991, ¶ 11.2 (1994); *Lamagna v. Austl.*, H.R. Comm. U.N. Doc. CCPR/C/65/D/737/1997, ¶ 6.2 (1999).

305. See *Bendeck-Cohdinsa v. Hond.*, Inter-Am. Ct. H.R., Report No. 106/99, OEA/Ser.L/V/II.10 6, doc. 6 rev. ¶¶ 17–30 (Sept. 27, 1999); *Merens & Family v. Arg.*, Inter-Am. Comm’n H.R., Report No. 103/99, OEA/Ser.L/V/II.10 6, doc. 6 rev. ¶¶ 14–19 (Sept. 27, 1999); *Carvallo Quintana v. Arg.*, Inter-Am. Comm’n H.R., Report No. 67/01, OEA/Ser.L/VII.114, doc. 5, rev. ¶¶ 54–55 (June 14, 2001); *Forzanni Ballard v. Peru*, Inter-Am. Comm’n H.R., Report No. 40/05 ¶¶ 34–39 (Mar. 9, 2005).

306. See 105 shareholders of the Banco de Lima v. Peru, Inter-Am. Comm’n H.R., Report No. 10/91, OEA/Ser.L/V/II.79, doc. 12 rev. 1 ¶¶ 3–4 (Feb. 22, 1991); *Tabacalera Boqueron S.A. v. Para.*, Inter-Am. Comm’n H.R., Report No. 47/97, OEA/Ser.L/V/II.98, doc. 6 rev. ¶¶ 27, 32 (Oct. 16, 1997); *Carvallo Quintana v. Arg.*, *supra* note 305, ¶¶ 54–61; *Cantos v. Arg.*, *supra* note 215, ¶ 29.

307. See *Times Newspaper v. U.K.*, *supra* note 85, at 95, ¶ 1.

complaint, it is not entirely clear whether the CERD accords rights directly to the state.³⁰⁸ As mentioned above, the CERD simply says that “everyone” enjoys the rights in the Convention,³⁰⁹ including non-discrimination in freedom of expression.³¹⁰ “Everyone” includes “persons, groups of persons or institutions.”³¹¹ It is highly unlikely that “persons” covers state entities, but “groups of persons” and “institutions” might. Again, we must wonder what kinds of entities would be covered by “institutions” if legal persons, perhaps also corporations, are already covered by “groups.”

This Article has already questioned whether a state would hold rights against discrimination under the CERD. The argument, in the extreme, was that it would permit states to bring complaints when they are treated in a racist manner in international relations. Discrimination against a state, however, could take the form of mistreatment of the state as an international legal person, as in the example of international aid. Furthermore, it could take the form of mistreatment of a state organ or agency, or even a quasi-state entity, where the entity could be characterized as an “institution” under the CERD. The language in the CERD permitting some distinctions between local citizens and foreign citizens suggests that international relations are exempted to a small degree under the CERD.³¹² Note, however, that the CERD does not necessarily permit distinction between different foreign citizens on prohibited grounds.³¹³

Under the ECHR, the ECtHR has stated that, while natural and legal persons can hold rights under the ECHR,³¹⁴

308. See CERD, art. 11.

309. See CERD, arts. 5, 6.

310. See *id.* art. 5(d)(viii).

311. *Id.* art. 2(1)(a).

312. See *id.* art. 1 (2) (“This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.”).

313. See *id.* art. 1(3) (“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.”) (emphasis added).

314. See *X. & Church of Scientology v. Swed.*, App. No. 7805/77, ¶ 2 (Eur. Comm’n Hum. Rts., May 5, 1979); *Niemietz v. Ger.*, App. No. 13710/88, ¶¶ 29, 30 (Eur. Ct. Hum. Rts., Dec. 16, 1992); *Société Colas Est v. Fr.*, App. No. 37971/97, ¶ 41 (Eur. Ct. Hum. Rts., Apr. 16, 2002).

governmental bodies do not.³¹⁵ For standing, the ECtHR has already determined that only non-governmental bodies can bring claims.³¹⁶ This matter was discussed above under the section on standing.³¹⁷ In addition, the ECtHR has determined that when an entity is sufficiently state-owned or controlled, then the state can bear responsibility for acts violating the Convention.³¹⁸ The ECtHR opined that, at least the rules on attribution and responsibility should follow the rules on standing, because there was no good reason to distinguish them.³¹⁹ Although issues of standing, attribution and responsibility are distinct from the rules on which entities benefit from rights in the Convention, the ECtHR appears to favor the position that the state-owned or controlled entities would not have any rights under the Convention.³²⁰ Otherwise, the owned or controlled entities would have claims (though no standing) against the state, the very actor controlling them.

The ECtHR considers a variety of factors in determining whether an entity is a state-owned or controlled body for purposes of responsibility, which largely tracks similar criteria for standing. Simply existing as a separate entity will not protect a state from responsibility or make the entity independent.³²¹ The ECtHR will consider a “company’s legal status (under public or private law); the nature of its activity (a public function or an ordinary commercial business); the context of its operation (such as a monopoly or heavily regulated business); its institutional

315. See *Luganksvugillya v. Ukr.*, *supra* note 95, at 3.

316. See *Österreichischer Rundfunk v. Austria*, *supra* note 98, ¶¶ 46–54; see also *Iran Shipping Lines v. Turk.*, *supra* note 95, at 349–50.

317. See *supra* sec. III(B)(1)

318. See *Ljubljanska Banka v. Croat.*, *supra* note 85, ¶ 53.

319. See *Ljubljanska Banka v. Croat.*, *supra* note 85, ¶ 53 (“Even though those findings [*Ališić et al. v. Bosnia & Herz et al.*] were made in the context of responsibility of the State ... the Court has already held that findings made in such context apply with equal force in the context of determining whether a (State-owned) company may be considered a ‘non-governmental organization’ within the meaning of Article 34 of the Convention) (*citing* *Ališić et al. v. Bosn. & Herz.*, *Croat.*, *Serb.*, *Slovn.* & *FYRO Maced.*, App. No. 60642/08, ¶ 114 (Eur. Ct. Hum. Rts., July 16, 2014) [hereinafter *Ališić et al. v. Bosnia et al.*]).

320. See *id.*

321. See *Mykhaylenky & Others v. Ukr.*, App. Nos. 35091/02, et al., ¶¶ 43–46 (Eur. Ct. Hum. Rts., Nov. 30, 2004); *Cooperativa Agricola Slobozia-Hanesei v. Mold.*, App. No. 39745/02, ¶¶ 17–19 (Eur. Ct. Hum. Rts., Apr. 3, 2007); *Yershova v. Russ.*, App. No. 1387/04, ¶¶ 54–63 (Eur. Ct. Hum. Rts., Apr. 8, 2010); *Ališić et al. v. Bosnia et al.*, *supra* note 319, ¶ 114.

independence (the extent of State ownership); and its operational independence (the extent of State supervision and control).³²² Additionally, the ECtHR will also consider “whether the State was directly responsible for the company’s financial difficulties, . . . failed to keep an arm’s-length relationship” or siphoned funds, and generally whether it abused the corporate form.³²³

Under the ECHR, it is not yet established whether the rules on standing have any bearing on the scope of the substantive rights in the Convention, although it most likely does. In the section above, this author discussed the recent case of *Slovenia v Croatia* before the ECtHR.³²⁴ In the case, the ECtHR concluded that governmental organizations did not enjoy any rights under the ECHR.³²⁵ It did not expressly base this conclusion on the rules of standing, but instead on the “principle to prevent a Contracting Party from acting as both an applicant and a respondent party before the Court.”³²⁶ It added that “the Court should take into account the specific nature of the Convention as an instrument for the effective protection of human rights, universally recognised in international law . . . In other words, only individuals, groups of individuals and legal entities which qualify as ‘non-governmental organisations’ within the meaning of Article 34 can be bearers of rights under the Convention, but not a Contracting State or any legal entity which has to be regarded as a governmental organisation.”³²⁷ In interpreting the nature of human rights treaties, it relied on the practice of the ICJ in the *Reservations to Genocide Convention* advisory opinion, the Inter-American Court of Human Rights in the *Effect of Reservations to the American Convention on Human Rights* advisory opinion, and the Human Rights Committee in General Comment No.

322. See *Zastava v. Serb.*, *supra* note 108, ¶¶ 19–23; *Ališić et al. v Bosnia et al.*, *supra* note 319 at paras. 114–15; see also *Ljubljanska Banka v. Croat.*, *supra* note 85, ¶ 52.

323. See *Anokhin v. Russ.*, App. No. 25867/02, at 7 (Eur. Ct. Hum. Rts., May 31, 2007); *Khachatryan v. Arm.*, App. No. 31761/04, ¶¶ 51–55 (Eur. Ct. Hum. Rts., Dec. 1, 2009); *Ališić et al. v. Bosnia et al.*, *supra* note 319, ¶ 115; see also *Ljubljanska Banka v. Croat.*, *supra* note 85, ¶ 52.

324. *Slovn. v. Croat.*, *supra* note 124.

325. See *id.* ¶ 70.

326. See *id.* ¶ 61.

327. See *id.* ¶ 66.

24.³²⁸ These opinions observed that human rights treaties have the objective of placing the rights of persons above states in a non-reciprocal manner so that a state agency, organ or controlled entity cannot be a beneficiary.³²⁹ The Court affirmed its prior case law for determining whether a legal person was governmental,³³⁰ and concluded that the inter-state complaint for the benefit of the bank was not admissible because the particular bank was a governmental organization.³³¹

The view of the ECtHR is, of course, not binding on the CERD Committee in applying the CERD. For example, there are indications that the African Commission on Human and People's Rights may take a different approach than the ECtHR. In *Civil Liberties Organization v. Nigeria* before the African Commission, the applicant submitted two bases for the complaint: acts depriving people of rights under the Charter³³² and acts "ousting the jurisdiction of the courts."³³³ Rather than dismiss the claim on behalf of the courts as inadmissible, the Commission concluded that both the claims had merit, deciding that the acts

328. See *id.* (citing Rsrvs. to the Convention on the Prevention & Punishment of the Crime of Genocide, Advisory Opinion, 1951 I.C.J. Rep., 23 (May 28); Cyprus v. Turk., *supra* note 124 at ¶ 46; Effect of Rsrvs. on the Entry into Force of the Am. Convention on Hum. Rts. (Arts. 74 & 75), Advisory Opinion OC-2/82, ser. A, No. 2, ¶ 29 (Inter-Am. Ct. H.R., Sept. 24, 1982); CCPR Gen. Comment No. 24, Issues Relating to Reservations Made upon Ratification or Accession to the International Covenant on Civil and Political Rights or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.6, ¶ 17 (1994)).

329. See Slovn. v. Croat., *supra* note 124, ¶ 66; Cyprus v. Turk., *supra* note 124, ¶ 46.

330. See *id.* ¶¶ 61–62 (citing Ärztekammer für Wien & Dorner v. Austria, App. No. 8895/10, ¶¶ 35–36 (Eur. Ct. Hum. Rts., Feb. 16, 2016); see also Österreichischer Rundfunk v. Austria, *supra* note 98, ¶¶ 48–54; Radio Fr. v. Fr., *supra* note 102, at 486; Iran Shipping Lines v. Turk., *supra* note 95, at 348–50.

331. See Slovn. v. Croat., *supra* note 124, ¶ 70.

332. See Civ. Liberties Org. v. Nigeria, Commc'n No. 129/94, ¶ 3 (Afr. Comm'n Hum. People's Rts., Mar. 3–22, 1995) ("The communication also complains that this ouster of the jurisdiction of the courts deprives Nigerians of their right to seek redress in the courts for government acts that violate their fundamental rights, in violation of Articles 7 (1) (a) of the African Charter.").

333. See *id.* ¶ 2 ("The communication complains that the ousting of the jurisdiction of the courts in Nigeria to adjudicate the legality of any decree threatens the independence of the judiciary and violates Article 26 of the African Charter.").

breached individual rights in the Charter,³³⁴ and also breached the obligation to “establish and protect the courts.”³³⁵ The decision certainly appears to view the obligations towards the courts as rights held by the courts, though invoked by an NGO, because the courts would not have standing. Thus, in this case, a state organ or entity might have a right opposable to its own state, though not necessarily standing to assert that right.

The CERD Committee has not given detail in its jurisprudence for the definition of an institution that would fall within the category of “everyone” protected. The language in the CERD seems to place “institutions” as rights holders in opposing to the state authorities or state institutions, when it states that “[e]ach State Party undertakes to engage in no act or practice of racial discrimination against . . . institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.”³³⁶ The decisions of the Committee in other cases, not involving the admissibility of a claim of an institution as a victim, have used the expression institution in this same sense of opposing state and private bodies.³³⁷ For example, the Committee has described clubs and workshop programs³³⁸ as “institutions,” though it has also described state entities with the same term,³³⁹ as well as highly autonomous public

334. *See id.* at *dispositif* ¶ 1 (“Holds that the Decrees in question constitute a breach of Art. 7 of the Charter, the right to be heard”).

335. *See id.* ¶ 2, *dispositif* ¶ 2 (“Holds the ouster of the courts’ jurisdiction constitutes a breach of Art. 26, the obligation to establish and protect the courts”).

336. *See* CERD, art. 2(1)(a).

337. *See infra*.

338. *See* Pjetri v. Switz., Commc’n No. 53/2013, Comm. Elim. Discrim., n.6 (Dec. 5, 2016) (“Regarding the reproaches that he did not work in a workshop for disabled people and was not active in a sports club for disabled people, the petitioner held that such institutions were more segregative than integrative in nature.”).

339. *See* A.M.M. v. Switz., Commc’n No. 50/2012, Comm. Elim. Discrim., ¶ 3 (Feb. 18, 2014) (“The petitioner deplores the fact that his treatment is not the same as the treatment given to the rest of the population, and also that, notwithstanding his many complaints to various institutions [“State party authorities”], there has been no enquiry into the action taken against him by the authorities.”); *see id.* ¶ 5.4 (“According to the petitioner, holders of an “F” permit [temporary admission status] are subject to arbitrary decisions by the State party’s administrative authorities. Every Swiss institution must inform the migration services of any procedures undertaken by members of this group.

entities.³⁴⁰ Generally, where the Committee has wanted to distinguish public from private institutions, it has often used the expression “state institution”³⁴¹ or “public institution”³⁴² as distinct from “independent institution,”³⁴³ but that usage is not completely uniform.

Other admissibility rules, such as rules on exhaustion of domestic remedies, appear to apply an understanding that the CERD does not cover government actors.³⁴⁴ An obvious example is the ability of states to bring interstate complaints,³⁴⁵ meaning

That includes schools, regional employment offices, unemployment benefit offices, doctors, banks and the Post Office.”).

340. *See id.* ¶ 8.3

According to the petitioner, his temporary admission status and the decisions and attitudes adopted by the authorities in accordance with that status make it possible for them not only to regulate his access to the labour market, medical treatment and academic and vocational training, and to interfere in his private life, but also to discredit him with any institution The Committee notes in particular the petitioner’s claims regarding obstacles to access to work, to vocational and university training and to health.

341. *See Jama v. Den.*, Commc’n No. 41/2008, Comm. Elim. Discrim., ¶ 7.3 (Aug. 21, 2009) (*citing* *Gelle v. Den.*, Commc’n No. 34/2004, Comm. Elim. Discrim., ¶ 7.3 (Mar. 6, 2006) (“ . . . criminal laws and other legal provisions prohibiting racial discrimination must also be effectively implemented by the competent national tribunals and other State institutions.”))

342. *See Lacko v. Slov.*, Commc’n No. 11/1998, Comm. Elim. Discrim., ¶ 3.5 (Aug. 9, 2001) (“In addition, the continued leasing of space to the restaurant by the main railway station, a public institution, further constitutes promotion by public institutions of racial discrimination.”); *Hagan v. Austl.*, Commc’n No. 26/2002, Comm. Elim. Discrim., ¶ 4.12 (Mar. 20, 2003) (“ . . . the State party argues . . . that the Trust is not a public authority or institution.”); *see also Zentralrat v Ger.*, *supra* note 69, ¶ 4.6 (“ . . . the State party . . . points to the fact that “The Criminalist” is not published by a public authority or institution, but by a professional association.”).

343. *See M.B. v. Den.*, Commc’n No. 20/2000, U.N. Doc. CERD/C/60/D/20/2000, Comm. Elim. Discrim., ¶ 2.2 (Mar. 13, 2002) (“the Documentary and Advisory Centre for Racial Discrimination in Copenhagen (DRC), an independent institution dealing with racial discrimination issues”); *Er v. Den.*, Commc’n No. 40/2007, Comm. Elim. Discrim., ¶ 2/3 (Aug. 8, 2007) (“The petitioner contacted an independent institution, the Documentation and Advisory Centre on Racial Discrimination (DACoRD), and asked for assistance.”).

344. *See infra.*

345. *See CERD*, art. 11(1) (“If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee.”).

that we would necessarily interpret “persons, groups of persons or institutions” to include states. However, when the state brings an inter-state complaint before the Committee, it must show that the individual has exhausted domestic remedies, suggesting that the claim is not that of the state, but more akin to diplomatic protection.³⁴⁶ When the state brings the claim before the ICJ as a violation of the CERD attracting state responsibility, however, a state should not need to show exhaustion, suggesting that, in this case, a state claims its own right as a party to the CERD. In no instance do the rules on admissibility suggest that a state ever makes a claim that it experienced prohibited racial discrimination against it.

The CERD Committee has also needed to differentiate between entities that are public or private for purposes of responsibility.³⁴⁷ In *Hagan v Australia*, the Committee implicitly accepted the argument of the mistreated individual that the institution was a public body based on several factors: reference to public law, appointment and removal authority over trustees, public function or service, and liability.³⁴⁸ Some institutions that were, again implicitly, acknowledged as public bodies, are likely to include “railway stations,” “schools, regional employment offices, unemployment benefit offices, doctors, banks . . . Post Office,” (“work [facilities], . . . vocational and university training [services] . . . health [services]”), and “national tribunals.”³⁴⁹ In

346. See *supra* sec. III(B)(2)(i)

347. See *Hagan v. Austl.*, *supra* note 342, ¶ 4.12 (“... the State party argues . . . that the Trust is not a public authority or institution.”); *Zentralrat v Ger.*, *supra* note 69, at para. 4.6.

348. See *Hagan v. Austl.*, *supra* note 342, ¶ 5.4 (“The petitioner rejects the characterization of the Sports Ground Trust as a ‘private body’. He points out that trustees are appointed and can be removed by the Minister, and that their function is to manage land for public (community) purposes. Indeed, the State party’s legislation provides that any liability of the trustees attaches to the State. [fn. 21 – Section 92 Lands Act 1994 (Queensland)] It is therefore a public authority or institution for Convention purposes.”); *id.* ¶ 7.1–7.8 (Committee implicitly agreed).

349. See *Lacko v. Slov.*, *supra* note 342, ¶ 3.5; *Gelle v. Den.*, *supra* note 368, ¶ 7.3; *Jama v. Den.*, *supra* note 368, ¶ 7.3; see generally *A.M.M. v. Switz.*, *supra* note 366, ¶¶ 5.4, 8.3.

turn, it excludes many professional associations³⁵⁰ and public advocacy organizations.³⁵¹

To date, the jurisprudence of the ICJ on CERD appears to provide some protection for governmental or quasi-governmental entities.³⁵² It is not yet entirely clear whether that protection accrues to the governmental institution itself or whether it accrues to the group, with the governmental body benefitting. In the *Ukraine v Russia ICSFT/CERD* case provisional measures order, the ECtHR found that the Crimean Tatar governmental institution of the *Mejlis* was protected.³⁵³ Although it has symbolic and cultural roles,³⁵⁴ this entity is quite clearly a representative organ of self-government and exercises governmental functions,³⁵⁵ which the court described as an “institution.”³⁵⁶

350. See Hagan v. Austl., *supra* note 342, ¶ 4.12 (“ . . . the State party argues . . . that the Trust is not a public authority or institution.”); Zentralrat v. Ger., *supra* note 69, at para. 4.6 .

351. See M.B. v. Den., *supra* note 343, ¶ 2.2 (“the Documentary and Advisory Centre for Racial Discrimination in Copenhagen (DRC), an independent institution dealing with racial discrimination issues . . .”); Er v. Den., *supra* note 343, ¶ 2.3 (“The petitioner contacted an independent institution, the Documentation and Advisory Centre on Racial Discrimination (DACoRD), and asked for assistance.”).

352. See *infra*.

353. See Application of the Int'l Convention for the Suppression of the Fin. of Terrorism & of the Int'l Convention on the Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.), Provisional Measures, 2017 I.C.J. Rep. 104, ¶¶ 83, 97 (Apr. 19), <https://www.icj-cij.org/public/files/case-related/166/166-20170419-ORD-01-00-EN.pdf> [hereinafter (Ukr. v. Russ., Provisional Measures)] (“ . . . it appears that some of the acts complained of by Ukraine fulfill this condition of plausibility. This is the case with respect to the banning of the *Mejlis* and the alleged restrictions on the educational rights of ethnic Ukrainians.”).

354. See *id.* (Crawford, J., declaration) ¶ 3 <https://www.icj-cij.org/public/files/case-related/166/166-20170419-ORD-01-05-EN.pdf> (*citing* The Provision on *Mejlis* of the Crimean Tatar People, Art. 2.1–2.2 (“The goals of the *Mejlis* include eliminating the consequences of the “*Surgun*” and the “restoration of the national and political rights of the Crimean Tatar people.” This is to be achieved *inter alia* through promoting “measures to revive the language, culture, religion, system of national upbringing and education, customs and traditions of Crimean Tatars.”) (internal citations omitted)).

355. See *id.* at ¶ 97 (“*Mejlis*, which is a self government body with quasi-executive functions”); *id.* (Crawford, J., declaration) ¶ 3 (*citing* The Provision on *Mejlis* of the Crimean Tatar People (Qirim Tatar Milli Mejlisi), Art. 1.1. (“The *Mejlis* is a representative body of the Crimean Tatar people”)).

356. See *id.* ¶ 97 (it is one of the “representative institutions” with legal “representativeness and legitimacy”).

It is not completely clear, however, whether the Court found that the rights in the CERD were held by the Mejlis as an “institution” (though its use of the term “institution” is indicative) or by the Crimean Tartar “group of persons.” Skotnikov protested the decision on precisely the argument that this quasi-governmental body did not enjoy rights under the CERD.³⁵⁷ In its decision, the Court affirmed that the CERD is “intended to protect individuals from racial discrimination”³⁵⁸ and it made that observation in the express context of CERD articles 2 and 5,³⁵⁹ which cover the right to freedom of expression for “persons, groups of persons and institutions.” This statement could mean that the Court views the specific rights, such as free expression, as protections for individuals only, and that the protection for “persons, groups of persons and institutions” is simply a means to protect individual rights.³⁶⁰ In the same case, though discussing the ICSFT, not the CERD, Donoghue argued that the term “any person” could include state officials.³⁶¹ While the reason was partly due to the obligations on the state in the ICSFT,³⁶² Donoghue also argued that the term “any person” was necessarily open and broad.³⁶³ Similarly, Robinson also noted that the

357. *See id.* (Skotnikov, J. *ad hoc*, separate opinion) ¶ 2 <https://www.icj-cij.org/public/files/case-related/166/166-20170419-ORD-01-07-EN.pdf> (“It is clear that this provision [of CERD] is not relevant to an organization which claims to represent a certain ethnic group as a self-government body with quasi executive functions. No rights specifically referred to in Article 5, paragraph (c), could have been infringed with respect to the *Mejlis*.”).

358. *See id.* ¶ 82.

359. *See id.*

360. *See id.* ¶ 81 (“The Court observes that there is a correlation between respect for individual rights, the obligations of States parties under CERD and the right of States parties to seek compliance therewith”); Application of the Int’l Convention on the Elimination of All Forms of Racial Discrimination (Geor. v .Russ.), Provisional Measure, 2008 I.C.J. Rep. 391, ¶ 126 (Oct. 15, 2008).

361. *See* Ukr. v. Russ., Preliminary Objections, *supra* note 153 ¶ 18 (Donoghue, J., declaration), <https://www.icj-cij.org/files/case-related/166/166-20191108-JUD-01-04-EN.pdf> (“I agree with the Court’s decision today that the term ‘any person,’ as used in Article 2, paragraph 1, of the ICSFT, does not exclude State officials.”).

362. *See id.* ¶ 19 (“a State party has an obligation to punish and to prevent certain conduct in which its own officials engage in the course of their duties.”).

363. *See id.* ¶ 20 (“the phrase ‘any person,’ in its ordinary meaning, admits of no limitation. The Respondent asks the Court to imply an exception that cannot be found in the text. When the plain language of a treaty provision is unambiguous, as is the case here, an exception to that provision could only be

terms in the ICFST were open to interpretation.³⁶⁴ Whether this view will carry over into CERD analysis is still open.

It is this issue that the Emirates may be contemplating when it argues that Al Jazeera is a state entity.³⁶⁵ It is true that much of the argument has focused on the question of whether Al Jazeera is a state entity, and therefore triggers the responsibility of the state for violating the first provisional measures order of non-aggravation, or the CERD itself, or both.³⁶⁶ Implicitly, however, if Al Jazeera is simply an organ of the State of Qatar, then it may not enjoy CERD rights. The ICJ may have had this result in mind when it noted the issue of whether Al Jazeera was one of the “State-owned, controlled and funded media outlets” when it refused provisional measures for its benefit.³⁶⁷ The UAE

implied if the rules of treaty interpretation pointed convincingly to such an exception.”).

364. *See id.* ¶ 3 (Robinson, J., declaration), <https://www.icj-cij.org/files/case-related/166/166-20191108-JUD-01-05-EN.pdf> (“it does this without indicating whether the term “perpetrators” includes public officials as well as private persons.”).

365. Note that the UAE has submitted similar arguments about other media outlets in Qatar, such as the *Al-Watan* paper: “half-owned by a former Qatari Prime Minister. And the Chairman of *Al-Watan*, as well as the Chairman and the Managing Director of *The Peninsula*, are all members of the Qatari royal family.” Interpretation & Application of the Int’l Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. U.A.E.), Verbatim Record, at Fogdestam-Agius, ¶ 26 (May 7, 2019), <https://www.icj-cij.org/files/case-related/172/172-20190507-ORA-01-00-BI.pdf> (citing *Al-Watan*, OMNES MEDIA, <https://www.omnesmedia.com/en/company/al-watan-4> (company profile on Omnes Media website). *See also* ANTI-DEFAMATION LEAGUE, ARAB MEDIA REVIEW (JULY–DEC. 2010) 37 (2011), https://web.archive.org/web/20120119200951/http://www.adl.org/Anti_semitism/arab/arab-media-review-July-December2010.pdf; *About Us*, THE PENINSULA, <https://www.thepeninsulaqatar.com/about> (last visited Mar. 4, 2023); *Dr Sheikh Khalid bin Thani Al Thani*, QATARI BUSINESSMEN ASS’N, <https://qatari-businessmen.org/eng/member.aspx?Name=103> (last visited Mar. 5, 2023) (Thani bin Abdulla Al Thani; Khalid bin Thani Al Thani).

366. *See* Qatar v. U.A.E., Verbatim Record (May 7, 2019), *supra* note 365, at Al-Otaiba, ¶ 11 (“ . . . Qatar has continued to incite hatred and extremism through Al Jazeera and other media outlets that it owns, controls or funds”); *id.* at Fogdestam-Agius, ¶ 3 n.94 (“ . . . Qatar . . . has, amongst other measures, orchestrated an aggressive public relations campaign against the UAE. Through its National Human Rights Committee, also known as the NHRC, and through media entities under its control . . .”) (citing e.g. “Despite the ICJ Order . . . Qatari accounts document Emirati violations,” *Al Jazeera*, 24 Jan. 2019).

367. Qatar v. U.A.E., 2019 I.C.J. 361, ¶ 21.

had argued that Al Jazeera is a state organ due to state control,³⁶⁸ state ownership,³⁶⁹ and/or state funding.³⁷⁰ The control supposedly takes the form of managerial³⁷¹ and editorial control,³⁷² highlighting the role of Qatar in the establishment,³⁷³

368. See *Qatar v. U.A.E.*, Verbatim Record (June 28, 2018 10:00 a.m.), *supra* note 142, at Alnowais, ¶ 19 (“the Government of Qatar is a major sponsor of hate speech through Al Jazeera’s Arabic language network and through its other State-controlled media entities ... given Qatar’s ownership and control of Al Jazeera, it is Qatar’s conduct which should be condemned”); Interpretation & Application of the Int’l Convention on the Elimination of All Forms of Racial Discrimination (*Qatar v. U.A.E.*), Provisional Measure, ¶¶ 3, 6, 8, 9, 16, 19, 20, 23, 31, 52, 67 (Mar. 22, 2019) (<https://www.icj-cij.org/files/case-related/172/172-20190322-REQ-01-00-EN.pdf> [hereinafter *Qatar v. U.A.E.*, Provisional Measure (Mar. 22, 2019)] (“Qatar has systematically used Al Jazeera and other media outlets owned, controlled or funded by Qatar as a platform to disseminate false news and to support extremist and terrorist groups.”); *Qatar v. U.A.E.*, Verbatim Record (May 7, 2019), *supra* note 365, at Al-Otaiba, ¶ 11; *id.* at Fogdestam-Agius, ¶ 3 n.94 (“media entities under its control . . .”); Interpretation & Application of the Int’l Convention on the Elimination of All Forms of Racial Discrimination (*Qatar v. U.A.E.*), Verbatim Record, at Volterra, ¶ 4 (May 9, 2019), <https://www.icj-cij.org/files/case-related/172/172-20190509-ORA-01-00-BI.pdf>; *id.* at Fogdestam-Agius, ¶¶ 7, 20.

369. See *Qatar v. U.A.E.*, Verbatim Record (June 28, 2018, 10:00 a.m.), *supra* note 142, at Alnowais, ¶ 19; *Qatar v. U.A.E.*, Provisional Measure (Mar. 22, 2019), *supra* note 368, ¶¶ 3, 6, 8, 9, 16, 19, 20, 23, 31, 52, 67 (“Qatar has systematically used Al Jazeera and other media outlets owned, controlled or funded by Qatar as a platform to disseminate false news and to support extremist and terrorist groups.”); *Qatar v. U.A.E.*, Verbatim Record (May 7, 2019), *supra* note 365, at Al-Otaiba, ¶ 11; *id.* at Fogdestam-Agius, ¶ 19 (“ . . . Qatari-owned media companies, including the *Qatar Tribune*, *The Peninsula*, *Al-Watan* and Al Jazeera, have broadcast these misrepresentations far and wide and in inflammatory tones”) (*citing* “Despite the ICJ Order . . . Qatari accounts document Emirati violations”, Al Jazeera, 24 Jan. 2019).

370. See *Qatar v. U.A.E.*, Provisional Measure (Mar. 22, 2019), *supra* note 368, ¶¶ 3, 6, 8, 9, 16, 19, 20, 23, 31, 52, 67 (“Qatar has systematically used Al Jazeera and other media outlets owned, controlled or funded by Qatar as a platform to disseminate false news and to support extremist and terrorist groups.”); *Qatar v. U.A.E.*, Verbatim Record (May 7, 2019), *supra* note 365, at Al-Otaiba, ¶ 11; *id.* at Fogdestam-Agius, ¶ 26.

371. See *id.* at Fogdestam-Agius, ¶ 26.

372. See *id.* at Fogdestam-Agius, ¶¶ 23, 27 (“The Government of Qatar itself has formally represented to its neighbours that it directs the content of its media outlets . . . This is an acknowledgement, in legally binding agreements, that Qatar exercises editorial control over Al Jazeera and other Qatari media.”).

373. See *id.* at Fogdestam-Agius, ¶ 26 (“Al Jazeera is established by decree of the Emir of Qatar”) (*citing* Qatar, Law No. 10 of 2011 on the Conversion of Al Jazeera Satellite Network to a Private Corporation for the Public Benefit, 18

appointment of the Chairman,³⁷⁴ issuance of its bylaws,³⁷⁵ determination of its corporate functioning,³⁷⁶ and issuance of policy directives.³⁷⁷ Further, the UAE alleges that the media in Qatar is not free and that it closed all independent media in favor of certain outlets, demonstrating its control.³⁷⁸ The Emirates has argued that Qatar has acknowledged that it does own and control Al Jazeera by consenting to the Riyadh Agreements.³⁷⁹

May 2011, available at: <http://almeezan.qa/LawPage.aspx?id=2471&language=en>).

374. See *Qatar v. U.A.E.*, Verbatim Record (May 7, 2019), *supra* note 365, at Fogdestam-Agius, ¶ 26 (“The Qatari Emir allocates Al Jazeera’s funding from the State, appoints its Chairman, issues its bylaws and determines all aspects of its corporate functioning”) (*citing* Qatar, Law No. 10 of 2011 on the Conversion of Al Jazeera Satellite Network to a Private Corporation for the Public Benefit, available at: <http://almeezan.qa/LawPage.aspx?id=2471&language=en>; Qatar, Law No. 21 of 2006 regarding Private Foundations for the Public Benefit, Article 3, available at: <http://almeezan.qa/LawPage.aspx?id=2697&language=en>; Memorandum and Articles of Association of Al Jazeera Media Network, 3 July 2011, RPMUAE, Ann. 32, Articles 4, 5, 17, 18, 24 and 26).

375. See *Qatar v. U.A.E.*, Verbatim Record (May 7, 2019), *supra* note 365, at Fogdestam-Agius, ¶ 26.

376. See *id.*

377. See *id.* (*citing* Article 24 of the Articles of Association of Al Jazeera).

378. See *Qatar v. U.A.E.*, Verbatim Record (May 9, 2019), *supra* note 368, at Fogdestam-Agius, ¶ 21 (“Qatari press is not free. On slide 48 and at tab 8, there is an excerpt from an article reporting that Qatar in 2016 closed down one of the few independent media in its country, leaving such channels that the Government itself controls.”).

379. See *Qatar v. U.A.E.*, Provisional Measure (Mar. 22, 2019), *supra* note 368, ¶ 5 (*citing* UAE - Supplementary Riyadh Agreement, U.N. Reg. No. 55378, Art. 3(d), Annex 4 (Nov. 16, 2014); First Riyadh Agreement, U.N. Reg. No. 55378, Annex 2 (Nov. 23–24, 2013); Mechanism Implementing the Riyadh Agreement, U.N. Reg. No. 55378, Annex 3 (Apr. 17, 2014)); *Qatar v. U.A.E.*, Verbatim Record (May 7, 2019), *supra* note 365, at Al-Otaiba, ¶ 9; *id.* at Fogdestam-Agius, ¶ 27 (“When signing the Riyadh Agreements, . . . Qatar committed its media to refrain from discussing certain subjects or offering support to the Muslim Brotherhood”) (*citing* Mechanism Implementing the Riyadh Agreement, Articles 1 and 2 (a); Supplementary Riyadh Agreement, Article 3 (d)).

Qatar, for its part, has argued that Al Jazeera and other media are private corporations,³⁸⁰ independent from the government.³⁸¹ Qatar supports this argument by first observing that the Emirates does not propose a legal test for determining when a media outlet is in fact a state organ.³⁸² Second, Qatar asserts that it does not create content for Al Jazeera,³⁸³ nor does it censor content,³⁸⁴ by identifying content that was sourced from Amnesty International and the Special Rapporteur on the right to education, as well as submissions at academic panels, press conferences and the Human Rights Council.³⁸⁵ It also submitted Al

380. See *Qatar v. U.A.E.*, Verbatim Record (May 8, 2019), *supra* note 200, at Al-Khulaifi, ¶ 15 (“private media sources, including Al Jazeera network”) *citing* *Qatar: Demands to Close Al Jazeera Endanger Press Freedom and Access to Information*, ARTICLE19 (June 30, 2017), <https://www.article19.org/resources/qatar-demands-to-close-al-Jazeera-endanger-press-freedom-and-access-to-information/>.

381. See *Qatar v. U.A.E.*, Verbatim Record (May 8, 2019, 10:00 a.m.), *supra* note 200, at Al-Khulaifi, ¶ 16 (arguing that Al Jazeera closure would attack press freedom implicitly arguing that it is free) *citing* *Reporters W/o Borders, Unacceptable Call*, *supra* note 216; *Qatar v. U.A.E.*, Verbatim Record (May 8, 2019, 10:00 a.m.), *supra* note 200, at Lowe, ¶ 17 (“neither will Qatar suppress fair reporting by the media and by human rights organizations within the State.”); *id.* at Amirfar, ¶ 40 (“By asking the Court to order provisional measures that are designed, on their face, to stifle free expression and a free press . . .”); *id.* at Al-Khulaifi, ¶ 15 (*citing* *Qatar: Demands to Close Al Jazeera Endanger Press Freedom and Access to Information*, ARTICLE19 (June 30, 2017), <https://www.article19.org/resources/qatar-demands-to-close-al-Jazeera-endanger-press-freedom-and-access-to-information/>); *Qatar v. U.A.E.*, Verbatim Record (May 8, 2019, 10:00 a.m.), *supra* note 200 at Amirfar, ¶ 38; *Qatar v. U.A.E.*, Verbatim Record (May 9, 2019), *supra* note 368, at Amirfar, ¶ 14.

382. See *Qatar v. U.A.E.*, Verbatim Record (May 9, 2019), *supra* note 368, at Lowe, ¶ 14 (“The UAE does not explain how it is to be determined if something is a national body, or if it is owned or controlled or funded to some degree or other by the State.”).

383. See *Qatar v. U.A.E.*, Verbatim Record (May 8, 2019, 10:00 a.m.), *supra* note 200, at Amirfar, ¶ 38 (“Though it would not matter if it had been, none of this content has been created by the Qatari State or by private Qatari media entities the UAE wrongly tries to portray as subject to the control and censorship of Qatar.”); *see generally* *Qatar v. U.A.E.*, Verbatim Record (May 9, 2019), *supra* note 368, at Amirfar, ¶ 12.

384. See *Qatar v. U.A.E.*, Verbatim Record (May 8, 2019, 10:00 a.m.), *supra* note 200, at Amirfar, ¶ 38; *Qatar v. U.A.E.*, Verbatim Record (May 9, 2019), *supra* note 368, at Amirfar, ¶ 13.

385. See *Qatar v. U.A.E.*, Verbatim Record (May 8, 2019), *supra* note 200, at Amirfar, ¶ 38 (“The specific articles the UAE identifies are reporting by Qatari media on the public statements of independent human rights observers such as Amnesty International, the Special Rapporteur on the right to education ...

Jazeera's editorial guidelines and ethics regulations,³⁸⁶ and noted that both the United Nations Special Rapporteur on freedom of opinion and expression³⁸⁷ and Reporters Without Borders³⁸⁸ have argued that closing Al Jazeera was an attack on press freedom.

It is difficult to establish that Al Jazeera is a state entity in the meaning of that term under most human rights instruments. While the CERD has no clear definition of state actors, the factors from other treaty bodies in the context of either standing or responsibility are persuasive. Since it is a private corporation,³⁸⁹ governed by private law,³⁹⁰ providing a non-governmental

that detail the UAE's violations of Qataris' rights. These statements were made at public events, at sideline meetings of the Human Rights Council, on academic panels, and at press conferences, and they form part of the international public discourse about the UAE's actions." [internal citations omitted].

386. See *Qatar v. U.A.E.*, Verbatim Record (May 9, 2019), *supra* note 368, at Amirfar, ¶ 14 (citing *Editorial Standards*, AL JAZEERA MEDIA NETWORK (May 3, 2019), <https://network.aljazeera.com/about-us/our-values/standards>; *Code of Conduct*, AL JAZEERA MEDIA NETWORK (May 3, 2019), <https://network.aljazeera.com/about-us/our-values/values>; *Code of Ethics*, AL JAZEERA MEDIA NETWORK (May 3, 2019), <https://network.aljazeera.com/about-us/our-values/code-ethics>).

387. See *Qatar v. U.A.E.*, Verbatim Record (May 9, 2019), *supra* note 368, at Amirfar, ¶ 14 ("The United Nations Special Rapporteur on freedom of opinion and expression stated that the demands, including from the UAE, to shutter Al Jazeera "represent[ed] a serious threat to media freedom"19.") (citing *Demand for Qatar to Close Al-Jazeera 'A Major Blow to Media Pluralism' - UN Expert*, OFC OF THE UN HIGH COMM'R FOR HUM. RTS, (June 28, 2017), <https://www.ohchr.org/en/press-releases/2017/06/demand-qatar-close-al-jazeera-major-blow-media-pluralism-un-expert>).

388. See *Qatar v. U.A.E.*, Verbatim Record (May 9, 2019), *supra* note 368, at Amirfar, ¶ 14 ("And Reporters Without Borders has reported that "[Al Jazeera] provides a forum to all of the region's political tendencies . . . Al Jazeera is the Arab world's most important and influential media outlet."20") (citing *Reporters W/o Borders*, *Unacceptable Call*, *supra* note 216).

389. See, e.g., *Iran Shipping Lines v. Turk.*, *supra* note 95, at 349; *Transpetrol v. Slov.*, *supra* note 95, ¶ 62–63; *Ališić et al. v. Bosnia et al.*, *supra* note 319, ¶ 114; *Ljubljanska Banka v. Croat.*, *supra* note 85, ¶ 52.

390. See, e.g., *Consejo General v. Sp.*, *supra* note 95, at 153; *RENFE v. Sp.*, *supra* note 95, at 182; *Österreichischer Rundfunk v. Austria*, *supra* note 98, ¶¶ 46–54; *Iran Shipping Lines v. Turk.*, *supra* note 95, at 349–50; *Transpetrol v. Slov.*, *supra* note 95, ¶ 61; *Croat. Ch. Comm. v. Serb.*, *supra* note 95, ¶ 32.

service,³⁹¹ not operating in a monopoly,³⁹² and having a large degree of operational independence from the state,³⁹³ it is unlikely to be considered a state entity under any human rights test. Although it is true that the state is a major source of its funding,³⁹⁴ there is no evidence that the state intermingles the funding of the media and general state funds.³⁹⁵

Although the ICJ did not grant the first provisional measures order that would have benefitted Al Jazeera, had it been granted, it appears inclined to consider it a private corporation.³⁹⁶ When the ICJ gave the first order, it also ordered that the states not aggravate the dispute any further.³⁹⁷ Had the acts of Al Jazeera been aggravating, and had it been a state actor,

391. See, e.g., *Iran Shipping Lines v. Turk.*, *supra* note 95, at 349; *Transpetrol v. Slov.*, *supra* note 95, ¶ 62; *Ališić et al. v. Bosnia et al.*, *supra* note 319, ¶ 114; *Ljubljanska Banka v. Croat.*, *supra* note 85, ¶ 52.

392. See, e.g., *Ališić et al. v. Bosnia et al.*, *supra* note 319, ¶ 114; *Ljubljanska Banka v. Croat.*, *supra* note 85, ¶ 52. And in fact Al Jazeera's disruptive effect in the media has even led the expression the "The Al Jazeera Effect" when new media actors upset prior state-controlled media monopolies. See PHILIP SEIB, *THE AL JAZEERA EFFECT: HOW THE NEW GLOBAL MEDIA ARE RESHAPING WORLD POLITICS* (2008); William Lafi Youmans, *The Al Jazeera Effect*, in *ENCYC. OF SOC. MEDIA & POL.* 41–43 (Harvey Keric, ed., 2013).

393. See, e.g., *Anokhin v. Russ.*, *supra* note 323; *Khachatryan v. Arm.*, *supra* note 346, ¶¶ 51–55; *Zastava v. Serb.*, *supra* note 108, at ¶¶ 19–23; *Ališić et al. v. Bosnia et al.*, *supra* note 319, ¶ 114; *Ljubljanska Banka v. Croat.*, *supra* note 85, ¶ 52.

394. Cf. *Anokhin v. Russ.*, *supra* note 323; *Khachatryan v. Arm.*, *supra* note 323, ¶¶ 51–55; *Ališić et al. v. Bosnia et al.*, *supra* note 319, ¶ 114; *Ljubljanska Banka v. Croat.*, *supra* note 85, ¶ 52.

395. See *Anokhin v. Russ.*, *supra* note 323; *Khachatryan v. Arm.*, *supra* note 323, ¶¶ 51–55; *Ališić et al. v. Bosnia et al.*, *supra* note 319, ¶ 116; see also *Ljubljanska Banka v. Croat.*, *supra* note 85, ¶ 52.

396. See *infra*.

397. See *Qatar v. U.A.E.*, 2019 I.C.J. 361, ¶ 24 ("It also observes that, in its 23 July 2018 Order, the Court already indicated a non-aggravation measure that binds both Parties; the present requests concerning non-aggravation are thus, in its view, without object."); see *id.*, ¶ 28 ("Such measures can only be indicated as an addition to specific measures to protect rights of the parties (see, for example, *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, Provisional Measures, I.C.J. Reports 2007 (I), 16, ¶¶ 49–51 (Jan. 23)). With regard to the present Request, the Court has not found that the conditions for the indication of specific provisional measures are met and thus it cannot indicate measures solely with respect to the non-aggravation of the dispute.").

then the ICJ would have found that Qatar was not in compliance with the first order.³⁹⁸ It did not.³⁹⁹

CONCLUSION

This Article has argued that it is somewhat unclear whether Al Jazeera and other media entities qualify as a person, a corporation or a government body, and that the differences in these various natures have implications for how the CERD could protect corporations such as Al Jazeera. The major issues on its nature can be divided into two main categories: admissibility and merits. Regarding admissibility, there are two sub-issues: standing and the exhaustion of domestic remedies.

For standing, the CERD sets up a system where certain actors can seek enforcement of CERD rights either before the CERD Committee or the International Court of Justice. If the actor wishes to seize the Committee, then it can only be an individual, a group of individuals, or a state. Individuals and groups of individuals must be victims, which, for groups of individuals, means that the group itself has been harmed or includes at least one member who was harmed. In the inter-state complaint at the Committee or before the ICJ, however, the state need not show harm in order to have standing. It would appear that institutions cannot bring claims, though the CERD Committee has interpreted groups of persons to include legal persons.

As for exhaustion of domestic remedies, again there are two fora, either the Committee or the ICJ. Before the Committee, individuals, groups or states must show that the victim attempted to exhaust all domestic remedies before seizing the Committee. At the ICJ, however, the CERD appears to permit a state to bring a case without needing to exhaust domestic remedies. This option would be as an alternative to a claim of diplomatic protection, which would require exhaustion, or to claims as a party to the CERD for CERD violations, potentially even as *parens patriae*, which would not. These options mean that a claim, either before the Committee or the ICJ could be invoking

398. See *id.* ¶ 24; see Qatar v. U.A.E., 2019 I.C.J. 373, ¶ 2 (declaration of Vice President Xue) (“As the measure of non-aggravation is already in place, logically, the third and fourth measures requested by the UAE are superfluous. In my view, this is a sufficient reason to reject these portions of the request.”).

399. See *id.*

the rights of a number of actors either directly or through protection.

Looking at the various alternatives for actors holding rights under the CERD, there are a number of possibilities for the media to qualify as protected. The CERD grants rights to “everyone.” Persons certainly have rights under the CERD. Groups of persons also hold rights. What is unclear is whether the group holds the right as an alternative form of person or whether it holds a collective right, which would more closely resemble the practice of the standing of groups. Legal persons certainly enjoy rights, but they too might qualify as persons, or groups, or perhaps institutions. The current practice is to recognize that legal persons have rights as groups of persons, but then it remains unclear what entities would be institutions. A final question is whether governmental bodies also enjoy rights under the CERD. It might be that these bodies fall under the category of institutions, and some Committee practice suggests that they might.

Turning to media corporations specifically, the correct conclusion is that they enjoy rights and can claim those rights, regardless of their particular nature. They could qualify as a legal person, and thus protect their rights as a “group of persons.” They could be a collective descriptor for a pool of individual victims. Even if they are a government body through ownership or control, they might still be able to claim victim status in relation to another state, or to fall back on the collectivity descriptor argument. For Al Jazeera, the State of Qatar surely had standing to protect it, though it would have had to show the exhaustion of domestic remedies if Qatar protected Al Jazeera by exercising diplomatic protection. If it claimed its own injury as a state, or as *parens patriae* for its nationals, then it would not have needed to do so. Similarly, if it simply sought the recognition that the UAE had violated the CERD to which it is a party, then it would not engage in protection at all, and again, there is no need to show exhaustion. In sum, through this patchwork of alternatives, media companies have a variety of options to choose for the most effective protection of their rights.