

The Intra-GCC Crisis: Qatari Soft Power and International Law

by Chiara Giuliani

The sanctions imposed by Saudi Arabia, Bahrain, the United Arab Emirates (UAE) and Egypt against Qatar since June 2017 have renewed focus on the lawfulness of unilateral coercive measures in international relations.

While the economic impact has not been as hard hitting as originally thought, thanks in large part to Qatar's relations with Turkey and Iran as well as with Europe and other states in Asia, the Gulf kingdom has reverted to a number of international fora to challenge the legality of these actions.

A little under two years ago, the so-called Arab Quartet surprised many by unilaterally announcing a series of restrictive measures and economic sanctions on its small neighbour Qatar. The blockading Arab states closed all land, sea and air routes for travel and trade to and from Qatar, expelled Qatari diplomats and ordered Qatari citizens to leave their territory within 14 days. On top of these measures, a number

of targeted sanctions against Qatari entities and individuals were approved, including asset freezes.¹

The blockading states justified these measures due to Qatar's alleged support for terrorist groups and related accusations of Doha's interference in the internal affairs of its neighbours, actions they deemed a violation of previous accords signed between Gulf Cooperation Council (GCC) members in 2013 and 2014.²

Finally, on 22 June 2017, the Arab Quartet released a list of 13 demands that essentially amounted to a request for Qatar to relinquish much of its sovereignty in both foreign and domestic policy, emphasising that all

¹ See Peter Beaumont, "Qatar Crisis Grows As Arab Nations Draw Up Terror Sanctions List", in *The Guardian*, 9 June 2017, <https://gu.com/p/6th2x>.

² See Hussein Ibish, "Unfulfilled 2014 Riyadh Agreement Defines Current GCC Rift", in *AGSIW Blog*, 6 June 2017, <https://wp.me/p9W40X-3NU>.

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sanctions would be lifted once Doha gave proof of implementation.³

Not surprisingly, Qatar vehemently denied these accusations and has since moved to challenge the legality of these measures. Accordingly, Qatar has brought complaints to the Office of the High Commissioner for Human Rights⁴ and has challenged the measures before the International Civil Aviation Organisation Council.⁵

Then, in August 2018, it filed a request for consultation before the World Trade Organisation's Dispute Settlement Body⁶ and eventually instituted proceedings against the UAE at the International Court of Justice (ICJ) under the Convention on the Elimination of all Forms of Racial

Discrimination (CERD).⁷

While Qatar has scored some judicial victories, the restrictive measures remain in place and it is unclear whether judicial rulings will be sufficient to modify the policies of blockading states.⁸

As for the lawfulness of the coercive measures imposed on Qatar, and notwithstanding the objective difficulty in describing the situation as a full-blown blockade,⁹ numerous scholars have cast doubt on the legality of these policies and the official justifications on which they are based.¹⁰

In particular, the closure of the Arab Quartet's air space to Qatari companies is in breach of the Chicago Convention on International Civil Aviation, of

³ For a legal analysis of the 13 demands see: Richard Falk, "The Gulf Crisis Reassessed from an International Law Perspective", in *The Transnational*, 13 March 2018, <https://transnational.live/2018/03/13/the-gulf-crisis-reassessed-from-an-international-law-perspective>.

⁴ See UN Office of the High Commissioner for Human Rights (OHCHR), *Committee on the Elimination of Racial Discrimination Examines the Report of Qatar*, 28 November 2018, <https://shar.es/a0X27r>.

⁵ See "ICAO Council Rejects Siege Countries' Objections Against Qatar", in *Gulf Times*, 27 June 2018, <https://www.gulf-times.com/story/597615>.

⁶ World Trade Organization (WTO), *Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights - Request for Consultations by Qatar* (WT/DS526/1, WT/DS527/1 and WT/DS528/1), 4 August 2017, https://www.wto.org/english/news_e/news17_e/ds526_7_8rfc_04aug17_e.htm. For further developments see WTO website: *United Arab Emirates - Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights*, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds526_e.htm.

⁷ International Court of Justice (ICJ), *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates). Application Instituting Proceedings*, 11 June 2018, <https://www.icj-cij.org/en/case/172>.

⁸ ICJ has approved provisional measures in favour of Qatar. See ICJ, *Request for the Indication of Provisional Measures, Order of 23 July 2018*, <https://www.icj-cij.org/en/case/172/orders>. ICAO has rejected the Arab Quartet's preliminary objections. See "ICAO Council Rejects Siege Countries' Objections Against Qatar", cit.

⁹ The definition of blockade implies the use of force to prevent every foreign country to enter the state under block, and this is not the case. In addition, Qatar still maintains access routes to the east, via-Iran.

¹⁰ Alexandra Hofer and Luca Ferro, "Sanctioning Qatar: Coercive Interference in the State's Domaine Réservé?", in *EJIL: Talk!*, 30 June 2017, <https://www.ejiltalk.org/?p=15383>; John Dugard and William Schabas, *The Blockade of Qatar One Year On: Violations of Human Rights and Coercive Measures*, 5 June 2018, <https://tgchambers.com/?p=3489>.

which all involved states are signatory parties.¹¹ Indeed, Article 5 affirms that all charter aircraft can enter or transit through the airspace of a signatory state without obtaining prior authorisation. Any member state, however, may temporarily restrict or prohibit flying over the whole or any part of its territory during a period of emergency or in the interest of public safety, but such restrictions “shall be applicable without distinction of nationality to aircraft of all other States”.¹² The Arab Quartet’s measures however clearly discriminate against Qatar, as no other nation is prevented from using the airspace of blockading states.

As for the demand that all Qatari citizens leave the territory of sanctioning states within 14 days, this provision appears to be in contravention with the prohibition of mass or collective expulsions of foreign citizens, as affirmed by customary international law.¹³

Furthermore, asset freezes belonging to a dozen organisations and 59 people may be interpreted as an indirect expropriation, thus in breach of customary international rules concerning the protection of foreign property.¹⁴

¹¹ Convention on International Civil Aviation, signed at Chicago on 7 December 1944, entered into force on 4 April 1947, <https://www.icao.int/publications/pages/doc7300.aspx>.

¹² Ibid., Article 9(b).

¹³ See OHCHR, “Expulsions of Aliens in International Human Rights Law”, in *OHCHR Discussion Papers*, September 2006, <http://www2.ohchr.org/english/issues/migration/taskforce/docs/Discussion-paper-expulsions.pdf>.

¹⁴ See Philipp Janig and Sara Mansour Fallah, “Certain Iranian Assets: The Limits of Anti-

Finally, the whole sanctioning regime may be considered an unlawful form of intervention in the internal affairs of Qatar. Indeed, the prohibition to exercise political or economic coercion with the purpose of inducing changes in the economic, political, commercial and social policies of other countries is a generally accepted principle of international law.¹⁵

In light of the absence of a UN Security Council resolution authorising sanctions against Qatar, the restrictive measures require a solid legal justification to be consistent with international law.

In this regard, coercive measures might be justified as countermeasures.¹⁶ However, this legal argument is untenable for different reasons.

Firstly, there is no clear and internationally recognised wrongful act committed by Qatar. On the contrary, the crisis was triggered by a hacking attack against the Qatar News Agency website and accusations of Doha’s support for Iran against its GCC partners.¹⁷

Terrorism Measures in Light of State Immunity and Standards of Treatment”, in *German Yearbook of International Law*, Vol. 59, 2016, p. 378 ss.

¹⁵ See, among others, the UN General Assembly Resolutions 2131(XX) of 21 December 1965 and 2625(XXV) of 24 October 1970.

¹⁶ Article 22 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts (DARSIWA), http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.

¹⁷ See Alia Chughtai, “Understanding the Blockade against Qatar”, in *Al Jazeera*, 5 June 2018, <https://www.aljazeera.com/indepth/interactive/2018/05/understanding-blockade-qatar-180530122209237.html>.

Secondly, the restrictive measures are not aimed at claiming the cessation, non-repetition and reparation of the wrongful act,¹⁸ and there is no clear pathway for Qatar to comply with the demands of blockading states, in themselves of dubious legal standing.

Lastly, even qualifying them as countermeasures, they would be unlawful due to the violation of Article 50 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts that, among others, require the respect of fundamental human rights and humanitarian law. Indeed, several measures target individuals and private entities, without making a distinction between the government of Qatar and its population.

Restrictive measures could be justified under Article XXI of the General Agreement on Tariffs and Trade (GATT), which allows states to waive the rules of free trade to protect essential security interests in time of war or other emergencies. Although states have great discretion in applying this rule, they still have to respect the obligation of good faith and cannot resort to “security exceptions” in an abusive manner. Essential security interests should meet higher standards compared to normal security interests. This does not seem to be the case with regards to the Arab Quartet sanctioning Qatar.

Qatar consequently would seem to be on solid ground in challenging the legality of these measures according to international law. Yet, a number of problems persist.

¹⁸ As required by Article 49 DARSIIWA.

First of all, certain mechanisms do not involve all the parties at stake. For example, in the ICJ proceeding the only defendant is the UAE because the other Gulf states have not accepted the jurisdiction of the Court.¹⁹ Moreover, single mechanisms cannot address the dispute in its entirety but only deal with limited issues that fall under their scope.

Notwithstanding these difficulties, Qatar’s embrace of legal means seems to be the only avenue at its disposal to challenge the coercive measures of its Arab neighbours. While this is unlikely to provide Doha with a quick victory and an end to the sanctions, it has also not resulted in further escalatory action by Doha’s blockading neighbours, essentially freezing the dispute instead.

Ultimately, Qatar’s measured response may also be reflective of a return by Doha to more careful diplomatic planning after years in which Qatar’s political, military and economic clout had led the small Gulf kingdom to embark on risky foreign policy endeavours. It was the image of Qatar punching well above its weight and emerging as an important regional player in a number of Middle Eastern theatres after the 2011 Arab uprisings that exacerbated divisions among GCC members, also catapulting a first intra-GCC crisis back in 2014.

In this respect, Qatar’s embrace of legal means to challenge the actions of blockading Arab states can serve two concrete purposes. On the one hand it allows Qatar to keep the moral high ground compared to its neighbours

¹⁹ See Article 22 CERD.

and the instigators of the present crisis. On the other, this response helps Qatar keep open the prospect for a quick resolution of the dispute, if and when political and geostrategic circumstances change.

In the interim, Qatar's decades old investments in diplomatic relations through sports, cultural initiatives, energy relations, military bases and its pan-Arab *Al Jazeera* channel, are serving the Gulf kingdom well, providing a degree of protection and political clout that cannot be ignored or completely silenced by Doha's antagonists, both near and far.

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