

QATAR: A NEW BEGINNING FOR INTERNATIONAL LAW IN THE MIDDLE EAST

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On June 5, 2017, people residing in the State of Qatar woke up to the shocking news that four of their neighboring countries and allies—the Kingdom of Saudi Arabia, the United Arab Emirates (UAE), the Kingdom of Bahrain, and the Arab Republic of Egypt—had restricted the country’s air, sea, and land access.¹ Qataris had to leave the territories of the countries, and nationals of the countries had to leave Qatar.² These measures cut all family, business, educational, diplomatic, and health ties between Qatar and the four states.³ People living in the region were severely impacted, and are to this day; the measures tore strong historical ties between Qatar and the four countries.⁴

The countries justified their actions by accusing Qatar of sponsoring and supporting terrorism, a claim Qatar consistently disputed.⁵ The countries stressed they would only lift the measures imposed on Qatar if the state met a list of thirteen demands within ten days.⁶ Among the demands were that Qatar: shut down Al Jazeera Media Network and cease funding of other media entities; align its political, economic, and military policies and strategies with those of the four countries;

1. *GCC Crisis*, GOV’T COMM. OFF. GOV’T QATAR, <https://www.gco.gov.qa/en/focus/gcc-crisis/> (last visited Jan. 21, 2020).

2. *Qatar Crisis: What You Need To Know*, BBC NEWS (July 19, 2017), <https://www.bbc.com/news/world-middle-east-40173757>.

3. Peter Beaumont, *Human Cost of the Qatar Crisis: Families Are Being Torn Apart*, GUARDIAN (June 14, 2017), <https://www.theguardian.com/world/2017/jun/14/human-cost-of-the-qatar-crisis-families-are-being-torn-apart>.

4. Kristian Coates Ulrichsen, *Qatar: The Gulf’s Problem Child*, ATLANTIC (June 5, 2017), <https://www.theatlantic.com/international/archive/2017/06/qatar-gcc-saudi-arabia-yemen-bahrain/529227>.

5. Tom Keatinge, *Why Qatar Is the Focus of Terrorism Claims*, BBC NEWS (June 13, 2017), <https://www.bbc.com/news/world-middle-east-40246734>.

6. Patrick Wintour, *Qatar Given 10 Days to Meet 13 Sweeping Demands by Saudi Arabia*, GUARDIAN (June 23, 2017), <https://www.theguardian.com/world/2017/jun/23/close-al-jazeera-saudi-arabia-issues-qatar-with-13-demands-to-end-blockade>.

and consent to monthly reports for an entire year.⁷ Qatar rejected such demands, but invited the blockading countries to negotiate a plausible solution with only one condition: that its sovereignty be treated as a red line.⁸

In the first weeks following the imposition of the measures, Qatar sent a letter to the U.N. Security Council concerning military breaches committed by the four countries, and further requested that the U.N. High Commissioner for Human Rights send a “technical committee” to Qatar to investigate human rights violations and that the U.N. Special Rapporteurs on Unilateral Coercive Punishment, Education, and Freedom of Religion and Belief look into the measures’ impact on Qatari nationals and residents.⁹ Qatar also resolved to document all violations that the Qatari people and residents suffered as a result of the measures: In July 2017, Qatar announced the establishment of the Compensation Claims Committee (CCC) under the leadership of Qatar’s Attorney General, Ali bin Fetais Al-Marri.¹⁰ The public and private sectors in Qatar would submit claims to the CCC to have them evaluated and disputed before international courts and tribunals.¹¹ As of April 2019, more than 4,000 individual claims had been sub-

7. *The 13 Demands on Qatar from Saudi Arabia, Bahrain, the UAE and Egypt*, NAT’L (June 23, 2017), <https://www.thenational.ae/world/the-13-demands-on-qatar-from-saudi-arabia-bahrain-the-uae-and-egypt-1.93329>.

8. Philip Pullella, *Qatar Says Arab States’ Demands ‘Made To Be Rejected’, Says Open to Talks*, REUTERS (July 1, 2017), <https://www.reuters.com/article/us-gulf-qatar-idUSKBN19M3NS>.

9. *Qatar’s Embassy to Canada, Statement on the Occasion of Eight Months Since Qatar’s Siege Was Imposed by Saudi Arabia, Bahrain, U.A.E. and Egypt*, QATAR EMBASSY OTTAWA – CAN. (Feb. 5, 2018), <http://ottawa.embassy.qa/en/news/detail/2018/02/05/qatar-s-embassy-to-canada-statement-on-the-occasion-of-eight-months-since-qatar-s-siege-was-imposed-by-saudi-arabia-bahrain-u.a.e.-and-egypt>.

10. *Foreign Ministry Secretary General: Compensation Claims Committee Receives 2,945 Individual Cases from NHRC*, MINISTRY FOREIGN AFF. QATAR (July 25, 2017), <https://mofa.gov.qa/en/all-mofa-news/details/2017/07/25/foreign-ministry-secretary-general-compensation-claims-committee-receives-2-945-individual-cases-from-nhrc>.

11. *Qatar Seeks ‘Siege’ Compensation for Firms, Citizens*, AL-MONITOR (July 9, 2017), <https://www.al-monitor.com/pulse/afp/2017/07/qatar-diplomacy-law.html>.

mitted.¹² Half of those were human rights violations regarding denial of access to education, health facilities, properties, and family, and the inability to perform Islamic religious duties in the cities of Mecca and Medina in Saudi Arabia.¹³

The CCC hired several law firms to assess the claims submitted, and decided on the legal course to take on the basis of their advice.¹⁴ Qatar submitted several claims to international institutional tribunals and ad hoc tribunals. Among the many claims it submitted, some of which are public, is a claim before the International Court of Justice (ICJ) against the UAE for human rights violations under the Convention on the Elimination of all Forms of Racial Discrimination (regarding the allegedly discriminatory measures that the UAE took).¹⁵ Additionally, Qatar submitted a claim before the World Trade Organization (WTO) to challenge the trade boycott based on discrimination against Qatari investors.¹⁶ Moreover, Qatar filed three different lawsuits in New York and London against three banks, alleging that they manipulated the Qatari riyal when the measures were first initiated, leading to several billions of U.S. dollars in losses.¹⁷ Lastly, Qatar filed a complaint with the Universal Postal Union against Bahrain, Saudi Arabia,

12. *Hqwq al-Insan Trşd 4210 Shkwá Dd Dwl al- Hşar* [Human Rights Commission Files 4,210 Complaints Against Blockading States], AL SHARQ [ORIENT] (Apr. 22, 2019), <https://bit.ly/2O66sVr> (translation by author).

13. *Infwjrfsk: ‘Aman Mn al-Shakawá Dd Anthakat Dwl Hşar Qtr* [Infographic: Two Years of Complaints Regarding Violations from the Blockade of Qatar], AL-KHALEEJ [GULF] (June 4, 2019), <https://bit.ly/32j0XYh> (translation by author).

14. *Qatar To Seek Compensation for Damages from Blockade*, AL JAZEERA (July 9, 2017), <https://www.aljazeera.com/news/2017/07/qatar-seek-compensation-damages-blockade-170709131825116.html>.

15. Priya Pillai, *Qatar v UAE: Uncharted Territory at the ICJ*, OPINIO JURIS, (May 18, 2019), <http://opiniojuris.org/2019/05/18/qatar-v-uae-uncharted-territory-at-the-icj>.

16. *Qatar Files Complaint’ with World Trade Organization*, BBC NEWS (July 31, 2017), <https://www.bbc.com/news/business-40780793>.

17. Eric Knecht & Dmitry Zhdannikov, *Qatar Sues Luxembourg, UAE, Saudi Banks in FX Manipulation Case*, REUTERS (Apr. 8, 2019), <https://www.reuters.com/article/us-qatar-currency/qatar-sues-luxembourg-uae-saudi-banks-in-fx-manipulation-case-idUSKCN1RK1FJ>.

and the UAE for their suspension of postal relationships with Qatar.¹⁸

As for the ad hoc tribunals, Qatar Pharma—a Qatari pharmaceutical company—and its Qatari founder filed a notice of arbitration against Saudi Arabia in 2019 under the Organization of Islamic Cooperation investment agreement.¹⁹ Qatar also filed two complaints with the International Civil Aviation Organization: one regarding the restrictions imposed on Qatar Airways, which prevented it from using the airspace of the four countries,²⁰ and the other regarding a report aired on Al Arabiya TV—a Saudi television channel based in Dubai—that depicted Saudi military air jets preventing a Qatar Airways airplane from entering its airspace.²¹

Despite the various reports that Qatar was facing an armed invasion from the four countries,²² and despite the presence of large U.S.²³ and Turkish²⁴ military bases in the country, Qatar did not resort to retaliation. It could have responded through a military attack, as a blockade is usually regarded as an act of war in international law, and is furthermore a violation of U.N. Charter Article 2(4).²⁵ Moreover, the

18. *Qatar Submits Legal Files on Blockade*, PENINSULA (June 17, 2017), <https://www.thepeninsulaqatar.com/article/17/06/2017/Qatar-submits-legal-files-on-blockade>.

19. Tom Jones, *Saudi Arabia Faces Another Claim Over Qatar Blockade*, GLOBAL ARB. REV. (Mar. 29, 2019), <https://globalarbitrationreview.com/article/1189489/saudi-arabia-faces-another-claim-over-qatar-blockade>.

20. Alex Macheras, *Here for the Long Haul: How Qatar is Overcoming the Aviation Blockade*, NEW ARAB (Jan. 8, 2018), <https://www.alaraby.co.uk/english/comment/2018/1/8/how-qatar-is-overcoming-the-aviation-blockade>.

21. *Qatar Files Complaint with ICAO Over Al Arabiya Report*, AL JAZEERA (Aug. 19, 2017), <https://www.aljazeera.com/news/2017/08/qatar-files-complaint-icao-al-arabiya-report-170819204047155.html>.

22. Alex Emmons, *Saudi Arabia Planned To Invade Qatar Last Summer. Rex Tillerson's Efforts To Stop It May Have Cost Him His Job*, INTERCEPT (Aug. 1, 2018), <https://theintercept.com/2018/08/01/rex-tillerson-qatar-saudi-uae>.

23. Adam Taylor, *As Trump Tries to End 'Endless Wars,' America's Biggest Mideast Base Is Getting Bigger*, WASH. POST (Aug. 21, 2019), https://www.washingtonpost.com/world/as-trump-tries-to-end-endless-wars-americas-biggest-mideast-base-is-getting-bigger/2019/08/20/47ac5854-bab4-11e9-8e83-4e6687e99814_story.html.

24. *Turkey Sends More Troops to Qatar*, AL JAZEERA (Dec. 27, 2017), <https://www.aljazeera.com/news/2017/12/171227051912500.html>.

25. See U.N. Charter art. 2, ¶ 4 (“All Members shall refrain in their international relations from the threat or use of force against the territorial integ-

countries' thirteen demands were incompatible with the principles of friendly relations amongst states under U.N. General Assembly Resolution 2625.²⁶ Additionally, several Saudi and Emirati journalists called for the Qatari regime to be deposed in social media posts, articles, and official newspapers.²⁷

Instead of escalating the conflict further, Qatar relied on soft power and law in this matter, setting a precedent in the region. It leveraged its relationships with Turkey, Europe, Iran, and several other states, which were established through its many deals spanning various fields, including sports, media, culture, education, and military.²⁸ One might argue that Qatar, a small state, does not have the physical capabilities to respond to an external threat.²⁹ However, Turkish and U.S. military presence bolster its capacity to mount military responses. Even so, at the high-level meeting of the U.N. General Assembly for the International Day of Multilateralism and Diplomacy for Peace, Qatar's Permanent Representative to the United Nations, Her Excellency Ambassador Sheikha Alya Ahmed bin Saif al-Thani stressed that the measures taken against her state would replace the rule of law in the international sphere with "the law of [the] jungle."³⁰

Qatar's recourse to international law to resolve the conflict—pursuant to Article 33(1) of the U.N. Charter³¹ and the

ity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.")

26. Richard Falk, *The Gulf Crisis Reassessed from an International Law Perspective*, GLOBAL RES. (Mar. 14, 2018), <https://www.globalresearch.ca/the-gulf-crisis-reassessed-from-an-international-law-perspective/5632113>.

27. MATTHIAS SAILER & STEPHAN ROLL, THREE SCENARIOS FOR THE QATAR CRISIS 2 (Stiftung Wissenschaft und Politik [German Inst. for Int'l & Sec. Affairs], SWP Comment 2017/C 25, 2017), https://www.swp-berlin.org/fileadmin/contents/products/comments/2017C25_sil_rll.pdf.

28. Chiara Giuliani, *The Intra-GCC Crisis: Qatari Soft Power and International Law*, 19 ISTITUTO AFFARI INTERNAZIONALI COMMENTS., no. 32, 2019, at 1, 1, 5.

29. See Rory Miller & Harry Verhoeven, *Overcoming Smallness: Qatar, the United Arab Emirates and Strategic Realignment in the Gulf*, 57 INT'L POL., 1, 4 (2020) (discussing the weakness and vulnerability of small states).

30. *Blockade Flagrant Violation of International Law: Qatar*, GULF TIMES (Apr. 26, 2019), <https://www.gulf-times.com/story/629835/Blockade-flagrant-violation-of-international-law-Q>.

31. See U.N. Charter art. 33, ¶ 1 ("The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, media-

General Assembly's Manila Declaration of November 1982³²—following its failed attempts solve the dispute through negotiation, deserves a closer look. Regardless of the legality of the countries' measures, the attention Qatar brought to its people and to international law in the region sets a precedent. International law in the Middle East has frequently been used to justify conflicts between rather than resolve them. Qatar's many recent cases in international tribunals and courts may encourage states to resort to international law in order to peacefully resolve their conflicts.

The Middle East has long been engulfed in internal and external conflicts.³³ International law has lacked legitimacy in the region, as its people have always regarded it as a means to escalate problems, rather than to prevent them or protect people. The fact that the region is heavily militarized makes matters even worse; the interaction of both factors instills a sense of "lawlessness" where the powerful dictate and the weak follow.³⁴ Given international law's controversial application in the Middle East, it has been referred to as a tool merely used in the realms of international politics, rather than one used to resolve conflicts.³⁵ Military interventions, whether authorized by the U.N. Security Council or not, have stemmed from the uncertainties following the uprising in 2011 in some states, granting regional rivalries the opportunity to settle their issues in bigger conflicts; until recently, the region has largely lacked norms for settling disputes through peaceful means.³⁶

As an example of a military intervention that did not involve prior approval from the U.N. Security Council, Saudi

tion, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.").

32. G.A. Res. 37/10, annex, Manila Declaration on the Peaceful Settlement of International Disputes (Nov. 15, 1982).

33. Onur Erpul, *The Challenges to Middle Eastern International Society: A Study in Disorder*, in *CONFLICT AND DIPLOMACY IN THE MIDDLE EAST* 32, 32 (Yannis A. Stivachtis ed., 2018).

34. JEAN ALLAIN, *INTERNATIONAL LAW IN THE MIDDLE EAST* 1 (2004).

35. *Id.* at 3.

36. Perry Cammack & Michele Dunne, *Fuelling Middle East Conflicts—Or Dousing the Flames*, *CARNEGIE ENDOWMENT FOR INT'L PEACE* (Oct. 23, 2018), <https://carnegieendowment.org/2018/10/23/fueling-middle-east-conflicts-or-dousing-flames-pub-77548>.

Arabia led a multinational attack on Yemen in March 2015.³⁷ The Saudi-led air strikes were only met with individual approval from certain states.³⁸ The Saudi government argued that its intervention was compliant with international law because it occurred by invitation of the Yemeni transitional president, the “legitimate” ruler of Yemen.³⁹ Saudi Arabia viewed Yemen as a place where terrorist organisations prospered, and as such, felt that it had to intervene to restore Yemen’s sovereignty and support its development as a state.⁴⁰ The Saudis asserted that the Yemeni transitional president granted consent by writing a letter to the U.N. Security Council asking them to authorize a military intervention, and by asking nations in the Persian Gulf and the Arab world to intervene.⁴¹ Additionally, the Saudis justified their intervention by stating that they acted in self-defense per international law, since they wanted to prevent the Iran-backed Houthis from perpetrating attacks against Saudi Arabia.⁴² Regardless of the success or failure of individual operations, there is no doubt that this military intervention, which the Saudis justified and legitimized with recourse to certain principles of international law, precipitated an extreme crisis in Yemen.⁴³

As an example of an authorized military intervention, the U.N. Security Council issued Resolution 1973, which, under Chapter VII of the U.N. Charter, authorized the use of “all necessary measures” to protect civilians in Libya.⁴⁴ On March 19, 2019, U.S., French, and British forces began missile strikes in Libya; by the end of the month, the North Atlantic Treaty

37. Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen*, 65 INT’L & COMP. L.Q. 61, 61–62 (2016).

38. *Id.*

39. Lara Aryani, *Saudi Arabia and the War of Legitimacy in Yemen*, JADALIYYA (May 2, 2015), <https://www.jadaliyya.com/Details/32051>.

40. Maria-Louise Clausen, *Justifying Military Intervention: Yemen as a Failed State*, 40 THIRD WORLD Q. 488, 492–93 (2019).

41. Ashley Deeks, *International Legal Justification for the Yemen Intervention: Blink and Miss It*, LAWFARE (Mar. 30, 2015), <https://www.lawfareblog.com/international-legal-justification-yemen-intervention-blink-and-miss-it>.

42. Clausen, *supra* note 40, at 493.

43. Fozia Jan & Shazia Majid, *Yemen Crises and the Role of Saudi Arabia*, 5 INT’L J. ARTS & HUMAN. 192, 194 (2017).

44. Geir Ulfstein & Hege Føsum Christiansen, *The Legality of the NATO Bombing in Libya*, 62 INT’L & COMP. L.Q. 159, 161 (2013).

Organization (NATO) took command of the operation.⁴⁵ The military intervention was based on the principle of Responsibility to Protect, which was established through U.N. Security Council Resolution 1674 in 2006, and affirmed states' responsibility to protect their populations from atrocious crimes.⁴⁶ This doctrine principle overrides the previous restrictions imposed upon states that restricted them from interfering in the matters of other states, as stipulated in Article 2(7) of the U.N. Charter.⁴⁷ Unfortunately, the military intervention had grave consequences in Libya. According to a Human Rights Watch report, the NATO strikes led to the deaths of seventy-two civilians, a third of them children.⁴⁸ Additionally, following the military intervention, human rights violations, the spread of weapons, and still other problems proliferated in the country.⁴⁹

Qatar's submission to various international courts and tribunals has, and will, encourage other states in the region to resort to international law to resolve conflicts, rather than to exacerbate them through armed conflict. It is worth considering that the UAE has in fact filed two claims against Qatar after the latter submitted its claims. In January 2019, following the Qatari Ministry of Economy's ban on the sale of products made in the UAE, Saudi Arabia, Bahrain, and Egypt, the UAE filed a claim before the WTO instead of retaliating and escalating the problem further.⁵⁰ Moreover, the UAE had requested that the ICJ impose provisional measures requiring Qatar to lift the block that it imposed on the online system the UAE

45. *Id.*

46. *Id.*; S.C. Res. 1674, ¶ 4 (Apr. 28, 2006).

47. Lesley Connolly, *Issues of Legality and Legitimacy: The Responsibility to Protect and NATO's Intervention in Libya*, J. POL. INQUIRY, Fall 2015, at 42, 42.

48. Fred Abrahams & Sidney Kwiram, *Unacknowledged Deaths: Civilian Casualties in NATO's Air Campaign in Libya*, HUM. RTS. WATCH (May 13, 2012), <https://www.hrw.org/report/2012/05/13/unacknowledged-deaths/civilian-casualties-natos-air-campaign-libya>.

49. ALAN J. KUPERMAN, LESSONS FROM LIBYA I (Quarterly Journal: Int'l Sec., Belfer Ctr. Policy Brief, 2013), <https://www.belfercenter.org/publication/lessons-libya-how-not-intervene>.

50. *UAE Files Trade Case Against Qatar Over Goods Ban*, NAT'L (Jan. 29, 2019), <https://www.thenational.ae/uae/government/uae-files-trade-case-against-qatar-over-goods-ban-1.819479>.

developed to allow Qataris to apply for visas to visit its territories.⁵¹

Other countries in the region, which have been overwhelmed by military conflicts, may follow suit, given that international law resolved and halted the crisis between Qatar and its neighboring countries. International law transformed a political crisis, and a potential military conflict, into a legal dispute. But such countries may not immediately follow, as evident in other fields, where it took them many years to follow Qatar's initiatives. In the media realm, Qatar launched Al Jazeera in November 1996.⁵² Al Arabiya, a television channel based in Dubai but funded by a Saudi businessman, then launched in March 2003.⁵³ In the field of sports, Qatar was the smallest and first Middle Eastern state to host the FIFA World Cup, which will be held in 2022.⁵⁴ Following suit, Saudi Arabia, Bahrain, and the UAE submitted a bid to jointly host the Under-20 FIFA World Cup in 2021.⁵⁵ In a variety of fields, Qatar has shown that it can achieve its goals through attraction, and not just coercion.⁵⁶ "Beware of small states," wrote Mikhail Bakunin in a letter in 1870.⁵⁷ Regardless of whether Qatar wins its cases or not, or whether it was in the right or wrong, the precedent it has set in the region for the use of international law will have a great impact in the near future, and should be followed closely.

51. Stephanie van den Berg, *World Court Rejects UAE Demand for Immediate Measures Against Qatar*, REUTERS (June 14, 2019), <https://www.reuters.com/article/us-qatar-emirates-worldcourt/world-court-rejects-uae-demand-for-immediate-measures-against-qatar-iduskcn1f1td>.

52. NICOLAS ELIADES, PEACE & CONFLICT MONITOR, THE RISE OF AL JAZEERA 3 (2006).

53. Maysam Behraves, *Al Arabiya: The "Saudispeak" of the Arab World*, 6 ASIAN POL. & POL'Y, 345, 345-46 (2014).

54. Paul Michael Brannagan & Richard Giulianotti, *The Soft Power-Soft Disempowerment Nexus: The Case of Qatar*, 94 INT'L AFF. 1139, 1139 (2018).

55. *Saudis, Bahrain, UAE Join To Bid for FIFA's U-20 World Cup*, USA TODAY (May 23, 2019), <https://www.usatoday.com/story/sports/soccer/2019/05/23/saudis-bahrain-uae-join-to-bid-for-fifas-u-20-world-cup/39508849>.

56. Brannagan & Giulianotti, *supra* note 54, at 1139.

57. Miller & Verhoeven, *supra* note 29, at 19.

