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Sanctioning Qatar: Coercive interference in the State's domaine réservé?

On 23 May, the Qatar News Agency published [content](#) attributing statements to Qatar's Emir which laid bare simmering regional sensitivities and quickly escalated into a full-blown diplomatic row between Qatar and other regional Powers.

Indeed, on Monday 5 June, [Saudi Arabia](#), the [United Arab Emirates \(UAE\)](#), [Bahrain](#) and [Egypt](#) adopted what has been [dubbed](#) a 'diplomatic and economic blockade' (to the annoyance of [some](#)). Not only did these States close their land, naval and aerial borders for travel and transport to and from Qatar, the three Gulf States also appeared to expel Qatari diplomats and order ([some](#)) Qatari citizens to leave their territory within 14 days. In addition, websites from the Al Jazeera Media Network, as well as other Qatari newspapers, were blocked and offices were shut down in several countries. At the end of a feverish week, on Friday 9 June, [targeted sanctions were furthermore adopted](#) against Qatari organizations and nationals believed to have links to Islamist militancy.

In justification of the measures, the sanctioning States invoked the Gulf Cooperation Council's [2013 Riyadh Agreement and its implementation mechanisms as well as the Comprehensive Agreement of 2014](#). Although the contents of these agreements are not public, it is believed that the Gulf States expected Qatar to curtail its support to groups that purportedly pose a threat to the region's stability, such as Hamas and the Muslim Brotherhood. They would also have expected Qatar to restrict the media attention these groups are given by Qatari-based outlets like Al Jazeera (see [here](#), [here](#)). However, given the scope of the measures against Qatar and the initial lack of clarity surrounding the allegations, the [US State Department questioned whether](#): 'the actions [were] really about their concerns regarding Qatar's alleged support for terrorism, or were they about the long simmering grievances between and among the GCC countries?'

Shortly afterwards, on 23 June, the Saudi-led quartet issued a list of 13 demands that Qatar is to implement within ten days. [The Guardian reported](#) that it requires Qatar to, *inter alia*: reduce its diplomatic ties with Iran; sever all ties to terrorist organisations; cease all funding provided by persons that have been designated as terrorists; cease all communication with opposition parties in Saudi Arabia, the UAE, Egypt and Bahrain; shut down Al-Jazeera, its affiliate stations and other news outlets that Qatar funds directly or indirectly; terminate Turkey's military presence in Qatar and cease any joint military cooperation with Turkey; and that Qatar '*align itself with the other Gulf and Arab countries militarily, politically, socially and economically*, as well as on economic matters, in line with an agreement reached with Saudi Arabia in 2014.' The [Saudi Foreign Minister](#) stressed that the demands are non-negotiable while the [UAE](#)

[ambassador to Russia](#) suggested that further sanctions would be considered if Qatar would refuse to comply.

Qatar [confirmed receipt of the list](#) but has yet to formulate an official response. However, describing the demands as unreasonable and non-actionable, the Qatari foreign minister reportedly [stated](#) that ‘the illegal blockade has nothing to do with combating terrorism, it is about limiting Qatar’s sovereignty, and outsourcing our foreign policy’. He further appeared to refer to a violation of the non-intervention principle when he [asserted at the beginning of the crisis that](#): ‘Anything not related to [the affairs of the Gulf Cooperation Council] is not subject to negotiation. [...] Al Jazeera is Qatar's affairs, Qatari foreign policy on regional issues is Qatar's affairs. And we are not going to negotiate on our own affairs’.

In this regard, we can recall the ICJ’s well-known passage on the principle of non-intervention in the Nicaragua judgment: ‘A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely. [...] Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones.’ The Court then adds that the element of coercion ‘forms the very essence of prohibited intervention’. Consequently, for the sanctions against Qatar to qualify as a violation of the principle they must (1) constitute *coercive* interference in (2) Qatar’s *domaine réservé*.

Concerning the latter condition, if the goal of the sanctioning States is to pressure Qatar into ceasing its funding of terrorism and comply with its previous agreements under the scope of the GCC, then the measures would not interfere with Qatar’s sovereign rights. However, as indicated above the precise content of the Riyadh agreement is not known. Further, media outlets and experts of the region have described the crisis as a means for Saudi Arabia to impose its will on Qatar, who seeks to follow an ‘independent foreign policy’, and as an attempt to force Qatar to muzzle its ‘free media’, which often voices criticism against Saudi policies (see [here](#), [here](#), [here](#) and [here](#));, such concerns have been repeatedly echoed in Qatar’s statements. If the Guardian’s report of the list of demands against Qatar is accurate, these suspicions would seem to be largely confirmed. In particular, the demand that Qatar ‘align itself with the other Gulf and Arab countries militarily, politically, socially and economically’ raises questions in this regard. Accordingly, as pursuing an autonomous foreign policy falls within Qatar’s *domaine réservé* (as indicated in [UNGA Friendly Relations Declaration](#) and the *Nicaragua* dictum above) the Gulf States could be responsible for violating the principle of non-intervention provided the measures amount to coercive interference, a term that has been notoriously difficult to interpret.

In the *Nicaragua* judgment, the ICJ declared that coercion is ‘particularly obvious’ in the case of an intervention that uses force (ICJ *Nicaragua* case, para.205). Doctrine has also referred to ‘dictatorial’ interference as being coercive, defined as state action ‘in effect depriving the state intervened against of control over the matter in question’ (Jennings and Watts, *Oppenheim’s International Law* (2008), para.129). This definition seems to align with the interpretation of coercion as something akin to *force majeure* by the International Law Commission in its commentary to Article 18 ARSIWA: ‘[n]othing less than conduct which forces the will of the coerced State will suffice, giving it no effective choice but to comply with the wishes of the coercing State’. According to this interpretation, the principle solely prohibits non-forcible interference that effectively *results* in the subordination of the will of the targeted State.

Consequently, as Qatar has – for the time being – not given into the demands by the Saudi-led bloc and has indicated that it has the means to resist the pressure imposed upon it, no violation of the principle of non-intervention would have occurred.

However, the ICJ clearly stipulated that intervention is wrongful when it ‘uses certain *methods* of coercion’ (ICJ *Nicaragua* case, para.205). Furthermore, the UNGA Friendly Relations Declaration states that ‘[n]o State may use or encourage the use of *economic political or any other type of measures* to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights’. A review of the Declaration’s *travaux préparatoires* moreover suggests an alternative approach to non-forcible coercive interference that is, perhaps, more conceptually sound. Already in 1964, a representative in the Special Committee floated the idea that coercion entails ‘*abnormal or improper pressure* exercised by one State on another State in order to force it to change its internal structure in a direction favourable to the interests of the State applying such coercion’ (UN Doc. A/5746, 16 November 1964, para.242) – the phrase ‘*abnormal or arbitrary form[s] of coercion*’ was picked up by representatives in a later session as well (UN Doc. A/6230, 27 June 1966, para.309). Interestingly, another representative linked such pressure to the ‘general principle of law which condemned certain actions as “abuses of rights”’ even if the pressure resulted from the exercise of sovereign rights by the intervening State (UN Doc. A/5746, 16 November 1964, para.263).

Following that line of thought, ‘abnormal’, ‘improper’ or ‘arbitrary’ interference arguably entails pressure resulting either from a violation of international law (e.g., an unlawful use of force or a violation of a bilateral agreement) or from a so-called *abus de droit*, i.e., the exercise of sovereign rights by the intervening State for the sole purpose of harming or damaging another State. It is, in particular, the second limb that might be applicable to situations such as the one under review: Even if we accept that the measures adopted by the Saudi-led bloc targeting Qatar fall within the exercise of their sovereign rights – by closing down the borders, planning to deport citizens, and choosing to cut all trade relations with a neighbouring State – , their legality could still be questioned as an *abusive* or *mala fide* (bad faith) interference in Qatari affairs (i.e., coercive); at least inasmuch as they are designed to inflict maximal damage upon Qatar for the purpose of compelling it into ‘[align\[ing\] itself with the other Gulf and Arab countries militarily, politically, socially and economically](#)’. After all, the non-intervention principle proclaims that ‘armed intervention *and all other forms of interference* or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law’. The principle therefore encompasses more than a mere restatement of the prohibition on the use of force and goes beyond outlawing support for armed rebel movements abroad. In this way, coercion does not necessarily amount to an irresistible pressure. This interpretation of non-forcible coercion would seem to correspond to developing States’ repeated condemnations of unilateral coercive measures as contrary to international law (see Alexandra Hofer, ‘The Developed/Developing Divide on Unilateral Coercive Measures: Legitimate Enforcement or Illegitimate Intervention?’ (2017) Chinese JIL).

Perhaps such an interpretation adheres better to the principle’s *ratio legis*: to prohibit one State from intervening in the affairs of another, regardless of the means employed. Indeed, it would be illogical to present Qatar – or any other State in a similar situation – with a ‘no-win situation’: either it is able to resist the pressure, meaning no violation of the non-intervention principle occurs but it is forced to endure the resulting damage; or it is not able to resist, resulting in a prohibited intervention but forcing it to fold to the wishes of the intervening States.