

# International Court of Justice expert's report

Appeal Relating to the Jurisdiction of the ICAO Council  
under Article 84 of the Convention on International Civil Aviation  
and under Article II, Section 2, of the 1944 International Air Services Transit  
Agreement (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)



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## 1. Statement of Facts



On Monday, 5 June 2017, three GCC (Gulf Cooperation Council) countries (Saudi Arabia, the United Arab Emirates, Bahrain) and Egypt cut their diplomatic relationships with Doha. This unprecedented crisis in the history of inter-Gulf relations has created a state of mistrust, not only among the governments of the Gulf States, but also among the citizens of those countries.

TRT World Forum organized a closed session on October 19, 2017, on the Gulf Crisis to discuss the reasons behind this unprecedented event in the region, its impact on the relationship between the member states of the GCC as well as on the security of the MENA

region. The participants at the panel attempted to describe, analyze and present the outcomes of their in-depth research to suggest solutions and offer scenarios that could be expected to resolve this crisis. They were focused on the roots of the current Gulf-Qatar crisis that dates back to 1995, when Qatar decided to leave the umbrella of Saudi Arabia to adopt an independent and open foreign policy. One of the speakers explained that despite Qatar not accepting the terms imposed on it, it is highly unlikely that this crisis will cause a breakdown of the Gulf Corporation Council (GCC), in the short term at least. They also described the strong relationship between Qatar and Turkey, and the ties that Ankara has with the rest of the Gulf capitals. One of the points highlighted that Qatar and Turkey have the same view regarding almost all issues in the region, par-

ticularly since the start of the Arab uprisings in 2011.

The recent dispute between Qatar and some of its neighbors is the most serious dispute among them in years and has the potential to further destabilize an already turbulent region. The ostensible triggers of the crisis were inflammatory remarks allegedly made by the Emir of Qatar and a reported ransom payment by Doha to Iran-backed extremist groups, but the real issues are profound differences between Qatar and the others about how to deal with Iran, political Islam, and issues of regional leadership. With Saudi Arabia and some of its allies in the Gulf Cooperation Council (GCC) closing land and sea routes to Qatar, canceling flights, withdrawing diplomats, expelling Qatari nationals, designating 59 Qatari citizens as terrorist supporters, prohibiting the

screening of the al-Jazeera TV network, and banning the expression of sympathy toward Qatar.

## **Causes of the Conflict**

The primary long term cause of the crisis between the Saudi-led camp and the government of Qatar is Doha's funding of and political support for politically active and sometimes violent Islamist groups, often affiliated with the Muslim Brotherhood. Qatar's GCC allies feel threatened by the potential influx of secretive organizations, extreme religious attitudes, and political activism; in terms of the threat these groups pose, the Saudi-led camp believes there is little difference between the Brotherhood and the more overtly violent extremist groups they face. Despite Saudi, Egyptian, and Emirati objections and the fact that it is the politically and militarily weaker party,

Qatar has continued to support its Islamist allies, and for several reasons: genuine ideological affinity; a sense that political Islam was an ascendant force in the region; a drive to boost its global influence by being able to engage with these groups on behalf of the international community; and a desire to challenge the status quo, including the rule of traditional Saudi allies. Qatar's independent foreign policy and willingness to challenge Saudi leadership has consistently weakened the notion of a "Sunni Arab camp." In addition, Qatar's use of the government-owned media outlet al-Jazeera to magnify the Muslim Brotherhood's influence throughout the Arab world and criticize leaders in Riyadh, Cairo, and Abu Dhabi has long been a serious thorn in regional relations. Already in 2002, Qatar's hostile media coverage of the Saudi government led Riyadh to recall

its ambassador from Doha for six years. Saudi Arabia did so once again in 2014, along with the UAE and Bahrain, in response to criticism by Qatar-based and Muslim Brotherhood-affiliated Sheikh Yusuf al-Qaradawi of the Egyptian and Emirati governments.

A second source of tension is Doha's accommodating stance toward Iran, which is seen by most of the other Sunni-majority states in the Gulf as a growing threat to their security or even existence. Over the last decade, the Qataris have taken steps such as voting against a UNSC resolution calling on Iran to halt its nuclear enrichment program and signing a bilateral counterterrorism agreement with Iran; this more conciliatory approach is likely the result of both Qatar's relative military weakness compared to Iran as well as its economic interest in maintaining cooperation

with the country with which it shares the world's largest gas field. More recently, the Emir of Qatar congratulated Iranian President Hassan Rouhani on his reelection (the only Gulf country other than Oman to do so), and according to the Financial Times, the government of Qatar irritated many of its Gulf allies in April 2017 by authorizing the payment of \$700 million to Iran and Kata'ib al-Hezbollah, the Iranian-backed Shia militia in Iraq, in exchange for the freedom of members of Qatar's royal family taken captive in Iraq. In late May 2017, the Emir was reported (probably falsely) by the Qatar State News Agency to have criticized the hostile rhetoric of the Gulf and the US toward Iran, leading to severe criticism throughout the rest of the Gulf and triggering the current crisis.

Third, the Arab Spring – which put the leadership and orien-

tation of a number of regional states “up for grabs” – stoked the regional competition among most of the Sunni monarchies, Iran, and the Islamists. In some cases, such as Syria, Iran was the main beneficiary. The rivalry between the Gulf States added fuel to the fire of an already bitter local struggle for power and the result has debilitated Egypt. In Libya, the Saudis and Emiratis have supported secular military leaders like General Khalifa Hiftar, while the Qataris (and Turkey) backed Islamist groups based in Misrata, thereby fueling the Libyan civil war and creating an environment conducive to the growth of the Islamic State. This has had deadly consequences for Libya's neighbors, Tunisia, and Egypt, as well as repercussions hundreds of miles away in Europe.

Fourth, President Trump's visit to Saudi Arabia, his first for-

eign visit to any country, was read in Riyadh, Abu Dhabi, and Cairo as a green light for them to punish Qatar for its support of Islamist groups. Trump expressed an unqualified commitment to Riyadh and its allies in the region, with a focus on containing Iran and fighting against radical Islam, signaling there would be no fallout from the United States if they took steps to push Qatar back into line.

## **The situation at present and the consequences**

Since multiple attempts by various intermediaries have failed to end the Qatar crisis, the international community is beginning to view it as a new normal for dealing with GCC countries.

There has been little change in Qatar's hyperactive foreign policy, and it is actively competing with Saudi Arabia and UAE for influence in the Arab

world and beyond. In the latest episode of this competition, both sides are trying to improve their relations with Iraq. Much to the displeasure of Saudi Arabia, which is courting the Shia political groups that are opposed to Iran's influence in Iraq, Qatar has shown willingness to court the Shia factions that are close to Iran.

Even if the trade embargo is resolved, deep divisions and mistrust among Gulf countries are now likely to be a long-standing feature of wider regional politics. This adds further complications to a region that is already dealing with simultaneous civil wars, mounting tensions between Iran and Saudi Arabia, and several insurgencies.

There is an international consensus that the Gulf crisis should be resolved through dialogue, but few international actors have done much to



press for this goal. The US – the key external actor – has taken a confused and inconsistent approach, leading to some cynicism in the region, where there is a widespread narrative that Western powers seek to ‘divide and rule’ the Arab world, and their profits from arms sales are noted.

Based on the current state of affairs between Saudi Arabia and Qatar, the crisis will not be resolved immediately. Many problems must be addressed by all interested sides to have a full comprehensive agreement about the intergovernmental relations between GCC member states i.e., how these states should formulate their foreign relations under the GCC umbrella.

It is an obvious fact that the Saudi hegemonic claims do not create a favorable environment among the GCC countries. Perhaps the best course of action is to create

ways and means to counter the Saudi power within the GCC infrastructure and allow breathing space for smaller members of the club.

As discussed in the body of this paper, the integration of Iran and Iraq should take place gradually based on their behavior toward GCC states and the United States. In the first step, the regional competition between Saudi Arabia and Iran must be addressed not just by GCC members, the United States as a guarantor of the regional security must have a place in this debate as well.

## 2. Statement of facts to be examined by the ICJ

2013-2014. Member States of the Gulf Cooperation Council concluded the First Riyadh Agreement followed by two supplemental agreements<sup>1</sup> (referred to as “the Riyadh Agreements”).

Under the Riyadh Agreements, Qatar committed to “cease supporting financing or harbouring persons or groups presenting a danger to national security in particular terrorist groups”. These agreements confirm, reinforce and complement Qatar’s other obligations under international law, including those set forth in:

- the UN Charter;
- the International Convention for the Suppression of the Financing of Terrorism;

- relevant binding UN Security Council resolutions;
- multilateral conventions under the auspices of the Organisation of Islamic Cooperation, the Arab League, and the Gulf Cooperation Council;
- other relevant regional and bilateral agreements to which Qatar is a party, and general international law on non-interference in the internal affairs of other States.

When subsequently Qatar failed to abide by the commitments it had undertaken (and reaffirmed) in the Riyadh Agreements, as well as its other relevant obligations under international law, and after repeated calls upon Qatar to honour its obligations were of no avail, the Applicants adopted a range of measures on 5 June 2017 (chapter “State-

1-URL: <https://www.icj-cij.org/files/case-related/173/173-20180704-APP-01-01-EN.pdf>

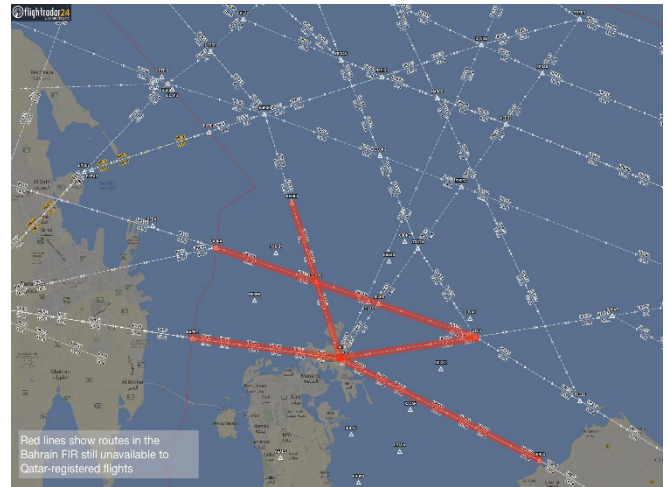


ment of Facts”) with the aim of inducing compliance by Qatar. The measures adopted included **the airspace restrictions** forming the subject of Qatar’s Application to the ICAO Council.

On 8 June 2017, Qatar requested that a special session of the ICAO Council be convened under Article 54 (n) of the Chicago Convention in order for the Council to consider the “matter of the actions of the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Saudi Arabia and the United Arab Emirates to close their airspace to aircraft registered in the State of Qatar”.

The ICAO Council held an extraordinary meeting to consider Qatar’s request under Article 54 (n) of the Chicago Convention on 31 July 2017. At that meeting, the Council noted that ICAO’s priority focus was on the safety and security of international civil

aviation, and recognized that the “overarching political issues [were] to be addressed”



On 30 October 2017, Qatar submitted to the International Civil Aviation Organization two Applications and Memorials, one pursuant to Article 84 of the Chicago Convention (Application (A)), and one pursuant to Article II, Section 2, of the International Air Services Transit Agreement (IAS-TA) (Application (B)).

A separate appeal is filed by the Kingdom of Bahrain, the Arab Republic of Egypt, and the United Arab Emirates against Qatar in respect of the ICAO Council’s similar decision concerning Application (B).

Application (A) and the accompanying Memorial were directed by Qatar against the Applicants as respondents, invoking Article 84 of the Chicago Convention and Article 1, paragraph (a), of the Rules for the Settlement of Differences adopted by the ICAO Council ("ICAO Rules"). Application (A) alleged various violations of the Chicago Convention as the result of airspace restrictions adopted by the Applicants on 5 June 2017.

**The preliminary objections** raised in respect of Application (A) were to the effect that the ICAO Council was without jurisdiction, or in the alternative, that the claims made by Qatar were inadmissible, on the grounds that:

(i) The present dispute would require the Council to determine issues that fall outside its jurisdiction: to rule on the lawfulness of the countermeasures adopted by the Ap-

plicants, including certain airspace restrictions, the Council would be required to rule on Qatar's compliance with critical obligations under international law entirely unrelated to, and outwith, the Chicago Convention (the "first preliminary objection").

(ii) Qatar had not complied with the necessary precondition to the existence of jurisdiction of the Council, contained in Article 84 of the Chicago Convention, of first attempting to resolve the disagreement regarding the airspace restrictions with the Applicants through negotiations prior to submitting its claims to the Council: and the procedural requirement in Article 2 (g) of the ICAO Rules of establishing in its Memorial that negotiations to settle the disagreement had taken place between the Parties but were not successful (then "second preliminary objection").

On 13 June 2018, the President of the ICAO Council informed the Parties that, in accordance with Article 27 of the ICAO Rules, the ICAO Council would deal with the preliminary objections in a half-day session on 26 June 2018, commencing at 2.30 p.m.

The ICAO Council subsequently adopted its “decision . . . on the preliminary objection” raised by the Applicants in respect of Application (A) **on 29 June 2018**. Unfortunately, full text of that decision has not been published. However, the only thing we need to know is that the ICAO Council rejected the Applicants’ objections.

## 4. Subject of the dispute

The subject of the dispute referred to the Court is **the appeal of the Applicants against the validity and correctness of the decision of the ICAO Council** dated 29 June 2018 in relation to Application (A) as filed by Qatar with the ICAO on 30 October 2017.

The Applicants appeal against the decision of the ICAO Council on the grounds that it:

(i) manifestly violated fundamental rules of due process and the right to be heard, in a manner so extreme as to render the proceedings devoid of any judicial character;

(ii) wrongly rejected the Applicants' preliminary objections to the competence of the ICAO Council to hear and adjudicate upon the disagreement submitted to it by Qatar relating to alleged violation of the Chicago Convention;

and (iii) consequently, wrongly affirmed that it was competent to rule upon the merits of that disagreement

## 5. Questions to be addressed in your essay:

What is “appropriate fora” to consider the case and to deliver a judgement?

Were the claims made by Qatar in the ICAO Council admissible?

What are the legitimate airspace restrictions authorized by “general international law”?



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