

## Research Article

### The Blockade of Qatar: Where Coercive Diplomacy Fails, Principles of Law Should Prevail

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#### Abstract

Contemporary international law has developed a cautious attitude toward the use of coercive diplomacy, specifically in the deployment of economic sanctions in the form of boycotting or blockading one sovereign state by another. If used unilaterally or collectively, particularly in the absence of a UN mandate, such coercive measures have often failed to change the policies of target states. In particular, economic sanctions have proven ineffectual in achieving the desired results and have instead caused unintended consequences on the complex global economic stage. Economic sanctions have had severe negative impacts on international trade and they often infringe on the basic pillars of human rights, politics, and morals. Indeed, resorting to such sanctions has achieved little success in rectifying disputed matters between opponent states. As such, the debate surrounding the possibility of producing a specific legal framework on the use of economic sanctions continues. To this end, and in light of what the state of Qatar has recently suffered from its neighboring states, this paper argues that the economic sanctions imposed on Qatar are a clear case of an extraterritorial application of sanctions that has generated immense political controversy and international resentment. Furthermore, this dubious application of sanctions and the resulting blockade of Qatar (it is undoubtedly a “blockade”, given the geography of the region and the intensity of actions taken) represent a breach of international legal norms embedded in both customary and treaty law.

**Keywords:** Blockade; Sanctions; Qatar; Diplomacy; Countermeasures

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حصار قطر: ضرورة اللوذ بمبادئ القانون الدولي عند فشل الدبلوماسية القسرية

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ملخص

شهد القانون الدولي العام تطوّرًا موازيًا وحذرًا لتطوّر العلاقات الدولية، وخصوصًا فيما يتعلّق بالدبلوماسية القسرية القائمة على استخدام الدول للعقوبات الاقتصادية، في شكل مقاطعة أو حظر أو حصار، لدول أخرى ذات سيادة. إنّ استخدام مثل هذه التدابير القسرية بشكل أحادي، أو بشكل جماعي لكن بغياب قرار أممي بذلك، باء بفشل تحقيق الأهداف المرجوة منه في معظم الأحيان، حيث لم تنتج هذه السياسات القسرية أي تغيير يذكر في منهج أو سياسات الدول المستهدفة. وعلى وجه الخصوص، أثبتت العقوبات الاقتصادية عدم فعاليتها في تحقيق النتائج المرجوة منها، متسببة بدلًا من ذلك بعواقب جسيمة على مسرح الاقتصادي العالمي وإن كانت غير مقصودة. فعلى سبيل المثال، ثبت أنّ للعقوبات الاقتصادية آثار سلبية شديدة على التجارة الدولية ما أدى في معظم الأحيان لانتهاك الركائز الأساسية لحقوق الإنسان ولركائز السياسة والأخلاق، في الوقت الذي يظهر فيه أنّ اللجوء إلى مثل هذه العقوبات لا يحقق إلا نجاحات ضئيلة لا تذكر في تصحيح الأمور المتنازع عليها بين الدول. في هذا الإطار، يأتي هذا البحث لنقاش مدى إمكانية وضع إطار قانوني محدد بشأن استخدام العقوبات الاقتصادية وبالذات في ضوء الأزمة الخليجية المتمثلة بحصار دولة قطر، وتبين أنّ العقوبات الاقتصادية المفروضة على قطر هي تمثيل واقعي لعقوبات دولية اقتصادية وتثير جدلاً سياسيًا وقانونيًا لا بد من سبر غوره، وذلك باعتبارها يمثل حصارًا فعليًا نظرًا لجغرافية المنطقة وشدة الإجراءات المتخذة)، ويمثل خرقًا للمبادئ القانونية الدولية العرفية والتعاقدية.

الكلمات المفتاحية: حصار، عقوبات، قطر، دبلوماسية، إجراءات وقائية

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## Introduction

Historically, economic sanctions have been used as far back as even the Ancient Greeks. In 432 BC, for example, sanctions were used in response to the kidnapping of three Asian women. A decree was then produced banning all trade between Megara and Athens, causing the outbreak of the Peloponnesian War.<sup>1</sup> Trade sanctions were also used during the innumerable European religious wars in the protection of various Christian minorities.<sup>2</sup>

In 1992, a naval blockade was imposed by the United Kingdom, Germany, and Italy on Venezuela. The naval blockade was in response to President Castro's refusal to pay foreign debts and damages owed to European citizens as a result of the Venezuelan civil war. This blockade compelled Venezuela to sign three protocols with the blockading states, one of which came before the Permanent Court of Arbitration. This court subsequently awarded preferential treatment to the blockading powers against the claims of Venezuela.<sup>3</sup>

In the beginning of the twentieth century, the idea of sanctioning a sovereign state was born alongside the birth of the League of Nations. The use of various forms of sanctions was embedded in the League's mandate to achieve collective security.<sup>4</sup> The United Nations Charter (UNCH),<sup>5</sup> by contrast, reflects a more adjudicatory framework, but nonetheless an increase in the prevalence of such sanctions is abundantly apparent.<sup>6</sup> Imposed by the Security Council (SC) itself, sanctions have been seen several times toward the end of the past century. Sanctions were imposed against Iraq in 1990; against Yugoslavia in 1991, 1992, and 1998; against Libya, Cambodia, Somalia, and Rwanda in 1992; against Liberia in 1992 and 2001; against Haiti in 1993; against Angola in 1993, 1997, and 1998; against Sudan in 1996; against Afghanistan in 1999 and 2000; and against Ethiopia-Eritrea and Liberia in 2000.<sup>7</sup>

More recently, contemporary Middle Eastern politics has seen the escalation and complication of a failed diplomacy in the Arabian Gulf region. The 2017 Gulf crisis took off when four Arab countries suddenly cut off all diplomatic ties with the state of Qatar during the holy month of Ramadan. This "quartet" of countries included the Kingdom of Saudi Arabia, the United Arab Emirates (UAE), Bahrain, and Egypt. The Saudi-led coalition decided to withdraw their ambassadors and imposed trade and travel bans on Qatar.

The justifications for these actions were that Qatar supports terrorism and had violated a prior

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1. Thucydides, *History of the Peloponnesian War*, 73 (translated by Rex Warner, 1972).

2. Alexander Kern, *Economic Sanctions: Law and Public Policy*, 8 (Palgrave Macmillan, 2009).

3. Reports Of International Arbitral Awards, *The Venezuelan Preferential Case (Germany, Great Britain, Italy, Venezuela et al.)*. Vol. IX, 99-110 (Feb. 22, 1904)

4. Art. 16 of the Covenant of the League of Nations 1919 provided for commercial and financial sanctions to apply to any member committing an act of aggression before attempting to settle the dispute peacefully, [http://avalon.law.yale.edu/20th\\_century/leagcov.asp](http://avalon.law.yale.edu/20th_century/leagcov.asp) (last visited Oct. 29, 2017).

5. Signed on June 26, 1945 in San Francisco, <http://www.un.org/en/charter-united-nations/index.html> (last visited Oct. 29, 2017).

6. Kern, *supra* note 2, p. 22-23.

7. David Cortright & George A. Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s*, 205-207 (A Project of the International Peace Academy, 2000).

2014 agreement with all members of the Gulf Cooperation Council (the GCC).<sup>8</sup> Allegations intensified, with member states stating that Qatar had long practiced an ambitious foreign policy and that its priorities were not coherent with those of the GCC. One key issue seemed to be Qatar's relations with Iran, the country with which Qatar shares the world's largest gas field. The other key issue is its continuous support for Islamist groups.<sup>9</sup> While Qatar has acknowledged that it had provided assistance to some Islamist groups, such as the Muslim Brotherhood, Qatar nevertheless constantly denied aiding unlawful militant groups linked to al-Qaeda or the so-called Islamic State (IS),<sup>10</sup> and that, on the contrary, it has consistently been a strong world partner in the fight against terrorism.<sup>11</sup>

Nevertheless, Saudi Arabia, the UAE, and Bahrain severed relations with Qatar on June 5, 2017, giving Qatari citizens only fourteen days to leave their territory and banning their own citizens from travelling to or residing in Qatar. Egypt also cut its diplomatic ties with Qatar but did not impose restrictions on the 180,000 Egyptian citizens living in Qatar. All countries of the Saudi-led coalition closed their airspace to Qatari aircraft, forcing foreign airlines to seek permission for overflights to and from Qatar.<sup>12</sup> In addition, Qatar's only land border was closed by Saudi Arabia, and all ships flying the Qatari flag or serving Qatar were banned from docking at many ports.<sup>13</sup> Accordingly, Qatar was forced to ship its cargo through Oman by sailing around the restriction zones and the ports in the UAE, causing the shipping costs to inflate tenfold.<sup>14</sup>

These measures had an initial major impact on the Qatari population of 2.7 million, whereby

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8. Doha's actions may destabilize the region: Saudi minister, *Newsweek ME*, June 14, 2017. The Saudi-led coalition presented a thirteen-point list of demands to Qatar on June 22 in return for ending the restrictions. These demands included:

- Curb diplomatic ties with Iran and close its diplomatic missions.
- Sever all ties to "terrorist organizations" and hand over "terrorist figures."
- Stop all funding for individuals or organizations designated as terrorists by Saudi Arabia, UAE, Egypt, Bahrain, the United States, and other countries.
- Shut down *Al Jazeera* and other Qatar-funded news outlets.
- Close a Turkish military base and halt joint military cooperation inside Qatar.
- End interference in other sovereign countries' internal affairs.
- Pay reparations and compensation for loss of life caused by Qatar's policies.
- Align with other Arab countries militarily, politically, socially, and economically.

9. See BBC News, Qatar crisis: What you need to know, 19 July 2017, at: <http://www.bbc.com/news/world-middle-east-40173757> (last visited on Jan. 22, 2018).

10. *Ibid.*

11. Sheikh Tamim denies Qatar has links to terrorism, *Khaleej Times*, Qatar, 25 May 2017, at: <https://www.khaleejtimes.com/region/qatar/sheikh-tamim-denies-qatar-has-links-to-terrorism> (last visited Dec. 11, 2018).

12. Qatar Airways, the national carrier, had to cancel flights to eighteen regional cities and reroute those to other destinations because of the airspace restrictions. See: Gulf blockade disrupts Qatar Airways flights, *Al Jazeera* and news agencies, at: <http://www.aljazeera.com/news/2017/06/gulf-blockade-disrupts-qatar-airways-flights-170606081841215.html> (last visited on Dec. 11, 2018).

13. Although exports of liquefied natural gas have not been affected, Qatar's stock market lost about 10 percent, or about \$15bn (£12bn), in market value over the first four weeks of the crisis. However, the stock market has since recovered 6 percent of its pre-crisis value. Generally, See: Andrew Torchia, Sanctions slashed Qatar imports in June, non-gas exports affected: data, *Reuters, Business News* 30 July 2017, at: [https://www.reuters.com/article/us-gulf-qatar-trade/sanctions-slashed-qatar-imports-in-june-non-gas-exports-affected-data-idUSKBN1AF0DM?utm\\_source=34553&utm\\_medium=partner](https://www.reuters.com/article/us-gulf-qatar-trade/sanctions-slashed-qatar-imports-in-june-non-gas-exports-affected-data-idUSKBN1AF0DM?utm_source=34553&utm_medium=partner) (last visited on Dec. 11, 2018).

14. See generally: Qatar launches new 'blockade-busting' maritimes routes, *The New Arab*, 9 August 2017, at: <https://www.alaraby.co.uk/english/news/2017/8/9/qatar-launches-new-blockade-busting-maritimes-routes> (last visited on Jan. 22, 2018).

residents rushed to stock up supplies, emptying supermarket shelves. This impact led to an open economic relationship with both Turkey and Iran who soon hoarded the supply chain in Doha by sending food via air and sea.<sup>15</sup> In opposition, Qatar's foreign affairs have always maintained that Qatar's neighboring countries were merely demanding that Qatar surrender its sovereignty.<sup>16</sup> On July 27, the Qatari foreign minister reported that the four blockading states were showing obstinacy and had "not taken any steps to solve the crisis [and that] the SC, the General Assembly (GA), and all the United Nations mechanisms could play a role in resolving the situation."<sup>17</sup>

From the onset of this crisis, arguments were made questioning whether the actions adopted by the four states (Saudi Arabia, UAE, Bahrain, and Egypt) amounted to an actual "blockade,"<sup>18</sup> or whether such actions were no more than a legitimate exercise of the sovereign right of a state to boycott another state.<sup>19</sup> The argument is that Qatar is merely being boycotted, rather than "besieged." What the boycotting states have done, the argument follows, is no more than preventing Qatar from using their land, air, and sea corridors, and that these are legitimate sovereign acts backed by international law.<sup>20</sup>

Economic sanctions have been variously described as a "deadly weapon" in debates concerning their effectiveness and legality.<sup>21</sup> In a famous quote by former US Secretary of State Madelaine Albright, when asked in 1996 by a *60 Minutes* reporter if she thought it was worth it that half a million Iraqi children had died due to US-led economic sanctions against Saddam Hussein's Iraq, she controversially replied, "We think the price is worth it."<sup>22</sup> As a foreign policy tool that allows one state to adversely affect another, economic sanctions are indeed tailored to achieve desired ends—be it regime change, the strangulation of military or strategic supplies, or the stoking of popular unrest. If used for a legitimate objective, economic sanctions might be one of the cheapest tools to coerce wrongdoing states into compliance with international law norms

15. See <https://qz.com/999017/qatar-is-facing-a-food-shortage-as-saudi-arabia-uae-and-bahrain-cut-diplomatic-ties/> (last visited on Jan. 22, 2018).

16. Minister Sheikh Mohammed bin Abdul Rahman Al Thani of Qatar said on July 5 that its neighbors were "demanding that we have to surrender our sovereignty," stressing that this is something Qatar would "never do."

17. Qatar says the UN should play a role in resolving the Gulf crisis, Fox News Channel, July 27, 2017.

18. A blockade means "the situation in which a country or place is surrounded by soldiers or ships to stop people or goods from going in or out." A siege means "the surrounding of a place by an armed force in order to defeat those defending it." See the Cambridge English Dictionary, <https://dictionary.cambridge.org/dictionary/english/siege> (last visited on Jan. 22, 2018). See also Philip J. Drew, *An Analysis of the Legality of Maritime Blockade in the Context of Twenty-First Century Humanitarian Law*, a thesis submitted to the Graduate Program in Law in conformity with the requirements for the Degree of Master of Laws, Queen's University Kingston, Ontario, Canada, 7 (2012), <http://www.collectionscanada.gc.ca/obj/thesescanada/vol2/OKQ/TC-OKQ-7028.pdf> (last visited on Jan. 22, 2018).

19. While blockade means "the surrounding of a place, especially a port, in order to prevent commerce and traffic in or out," as well as "any form of formal isolation, especially with the force of law or arms," boycotting means abstaining "either as an individual or group, from using, buying, or dealing with someone or some organization as an expression of protest." For instance, ships or other forces may be used to effect a naval blockade. See <http://wikidiff.com/boycott/blockade> (last visited Oct. 29, 2017).

20. See <http://www.arabnews.com/node/1113701> and <https://english.aawsat.com/abdul-rahman-al-rashed/opinion/qatar-misleading-siege-rhetoric> (last visited Oct. 29, 2017).

21. Gary C. Hufbauer, Jeffrey J. Schott, Kimberly A. Elliot & Barbara Oegg, *Economic Sanctions Reconsidered* 1 (3rd ed., Peterson Institute for International Economics, 2009).

22. <https://www.youtube.com/watch?v=R0WDCYcUJ4o>

and principles. Incorrectly applied, economic sanctions can cause devastation to worldwide peace and security, and would specifically affect civilian populations who might get caught in the process of the imposition of sanctions.

This paper highlights and analyzes the potential legal violations associated with the current Qatar crisis and the consequent economic sanctioning imposed by the Arabian quartet. The international legal framework, especially the international law regime that relates to the imposition of a non-UN sanction, guided this analysis. This paper also assesses whether the imposition of such sanctions on the state of Qatar by its neighboring countries is the most effective foreign policy alternative available to the quartet. Objectively, the blockade appears to be a failure of creative diplomacy and nothing short of bullying. However, it should be noted that this analysis is limited to the legal aspects of the blockade in terms of viability and does not, for instance, examine the economic costs incurred by the quartet or Qatar as a result of the blockade process.

This paper avoids semantics in asking whether the Gulf crisis falls within the ambit of being a “blockade” or a “boycott.” Rather, the argument proffered in this paper is based on the hypothesis that not only have sanctions continually failed to change the policies of target states, but also that non-UN authorized sanctions fall outside the norms of international law. Economic sanctions have a severe adverse impact on the global economy, international trade, human rights, and international politics, and are morally repugnant if recklessly deployed. Therefore, the reliance on economic sanctions, both unilateral and multilateral, has rendered the possible gains insubstantial when compared to the likely outcome. Resorting to such sanctions has recorded little success in rectifying the disputed matter between opponent states and represents a failure of coercive diplomacy. It is time the rule of international law is reasserted and non-UN authorized sanctions are revealed for what they truly are—illegal.

### **The Scope and Legitimacy of Sanctions and the GCC Crisis**

We shall now turn to discussing the limits for imposing sanctions. First, it should be noted that sanctions are normally imposed to alter objectionable foreign policy of the target state. Sanctions are designed to negatively impact the state power and authority of the target state, especially by attempting to limit or restrict imports from and exports to the target state. Sanctions can be either comprehensive or selective.<sup>23</sup> While comprehensive sanctions are normally directed at undermining the whole economy of the targeted state, selective models of imposed restrictions are generally aimed at vital veins of the target state. Freezing its financial assets, pulling out from official political relations, and banning travel and flights to or from the target state are all examples of selective sanctions.<sup>24</sup>

Officially, authorized sanctions are used and enforced by the United Nations Security Council (UNSC) under the provisions of Article 41 of the UN Charter. In this sense, the term “blockade” is correctly used since blockading a state is made effective once sanctions have been declared.

23. Robert J. Carbaugh, *Are economic sanctions useful in discouraging the proliferation of weapons of mass destruction?* 9 *4 World Economics* 184 (2008).

24. Jeremy M. Farrall, *United Nations Sanctions and the Rule of Law*, 107-120 (Cambridge University Press, 2007).

Accordingly, and in line with international law, sanctions are decided only by the UNSC when a threat to, or violation of, peace, or an act of aggression occurs.<sup>25</sup> Once declared, all UN member states become obligated to observe and implement the sanctions, unless the UNSC only passes a recommendation in this respect.

It is herein suggested that all the limits to sanctions in times of war ought to also apply in times of peace. The limits imposed upon the use of sanctions by the UNSC are appropriate both in times of war as well as in times of peace. Furthermore, the UNSC should be the only forum and the only international mechanism through which sanctions are imposed, and only in response to a threat to, or violation of, international peace, or an act of overt aggression by one state against another. The human impact of the UN sanctions in Iraq<sup>26</sup>, for example, has been one of the main reasons in the shift in the debate toward the necessity of establishing a more robust international framework for the imposition of sanctions.<sup>27</sup>

While the UNSC does not seem to be abandoning the use of sanctions, it has nonetheless imposed its resolutions in a way that carefully and specifically targets financial, travel, and trade elements as far as possible,<sup>28</sup> but also takes into account international humanitarian law and human rights law. For instance, when the UNSC adopted Resolution 1333 against Afghanistan in 2000, it attempted to support conventions to eliminate illegal drugs in addition to conventions to suppress terrorism.<sup>29</sup>

From a restrictively legal perspective, the concept of blockading one sovereign state by another sovereign state can only be legally justified if it adheres to a certain framework within the existing norms of international law. That is, when the siege or blockade is imposed by the UNSC in fulfillment of its mandate under Article 41 of the UN Charter, that siege or blockade is consistent with international legality. Article 41 provides that “The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”<sup>30</sup>

Accordingly, the UNSC has the power to impose collective economic sanctions under Article 41 of the UN Charter. Yet, the UNSC can do so only if Article 39 of the same Charter is satisfied. Article 39 determines that resorting to Article 41 is possible only if the purpose of the sanctions

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25. Regional organizations do not need authorization in imposing sanctions on one of its member states as long as the likelihood to take restrictive measures is inhibited in the organization’s constitutive instrument. Nonetheless, regional organizations can still take countermeasures against third states.

26. In this regard, see Mary E. O’Connell, *Debating the law of sanctions*, 13 *1 European Journal of International Law* 63 (2002). See also *Unsanctioned suffering: A human rights assessment of UN sanctions on Iraq*, available at: <http://www.cesr.org> (last visited Oct. 29, 2017).

27. See John Muller and Karl Muller, *Sanctions of mass destruction*, 3 *78 For. Aff.* 49 (1999).

28. See SC Press Release, *Speakers call for clearer definition, tightening of UN sanctions as Council draws on ‘lessons learned’ to redefine sanctions*, SC Press Release 6845 (2000).

29. SC Res. 1333 (2000) strengthened the already imposed SC Res. Sanctions 1267 (1999).

30. See <http://www.un.org/en/sections/un-charter/chapter-vii/index.html> (last visited Oct. 29, 2017).

is to maintain peace and security.<sup>31</sup> This purpose is expressly enshrined in Article I, paragraph 1 of the UN Charter. This ultimate goal is to be achieved through the measures outlined in Part VI of the UN Charter. These measures are tailored for the peaceful settlement of disputes as a preliminary step before resorting to the coercive measures outlined under Chapter VII. In other words, the legal and political considerations must first be exhausted before resorting to the more serious measures in Chapter VII.

Of course, one should note that the economic sanctions provided for in Article 41 do not include the use of armed force that is outlined in Article 42, which provides: “Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockades, and other operations by air, sea, or land forces of Members of the United Nations.”<sup>32</sup>

Therefore, it is obvious that imposing sanctions by states acting unilaterally, or even in a coalition with others, falls outside the established ambit enshrined in international law. States that participate in such actions can only justify their actions within international law upon the concept of “countermeasures.” Countermeasures are different from the imposition of sanctions as they can only be resorted to once the targeted state has committed one of the international wrongful acts. Importantly, the existence of unauthorized unilateral sanctions do not necessarily imply that the target state has actually committed an international wrong. It merely implies that the aggressor state believes this to be the case. Unauthorized sanctions could also emerge within the UNSC framework. For example, states may, by implementing sanctions imposed by the UNSC, go beyond the wording of the resolution and implement certain additional measures that would only be lawful if they amount to countermeasures.<sup>33</sup>

The *Air Services* arbitration brought about the first authoritative explanation of “countermeasures” after being adopted by the UN Charter.<sup>34</sup> Here, countermeasures were defined as a contrary act to international law, but it was acknowledged that they could be justified against the target state when the target state has committed a violation of international law.<sup>35</sup> The International Law Commission (ILC) subsequently published a report on this matter.<sup>36</sup> Then,

31. See M. Cherif, *Seeking the UNSC to hold Israel Accountable for Blockading Gaza* (author’s translations from Arabic), Swiss Info, 2009, <http://www.swissinfo.ch/ara> (last visited Oct. 29, 2017).

32. *Ibid.*

33. In response to an internationally wrongful act, states may take “retorsion” actions. Unlike countermeasures, retorsion actions are no more than unfriendly acts as has been affirmed by the ILC in its commentary. For more elaboration, see The UN International Law Commission (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts, in Report of the International Law Commission, Fifty-third session, 23 April-1 June and 2 July-10 August 2001 (A/56/10), p. 325, <http://www.un.org/documents/ga/docs/56/a5610.pdf> (last visited Oct. 29, 2017). See also Daniel Ş. Paraschiv, *System of Sanctions in Public International Law*, 12-16 (C. H. Beck ed., Bucharest, 2012).

34. Examples of these countermeasures may be found in: Georges Scelle, *Règles générales du droit de la paix*, RCADI, 46, 670 (1933); also, V. Constantin, *The International Law*, 349-350 (Ed. U. Juridic, Bucharest, 2010).

35. *Air Services Case (US. v. Fr.)*, 18 RIAA 416, para. 83 (1978).

36. UN International Law Commission (ILC Reports): Report on the Work of its 52nd Session (1 May-9 June and 10 July-18 August 2000), GAOR 55th Sess. Supp. No. 10 (A/55/10), paras 290-404.



the ICJ considered this issue in the *Gabčíkovo-Nagymaros* case.<sup>37</sup> The World Trade Organization (WTO) has also examined the concept of countermeasures in adjudication over banana imports between the United States and the European Union.<sup>38</sup> Based on these authoritative sources, two distinct principles can be outlined:

- i. Countermeasures can only be used in response to a wrong and should be used proportionally, i.e., proportional to the injury suffered.<sup>39</sup> Article 49 of the ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts places certain limits on the scope and object of countermeasures taken by the injured state. To be specific, countermeasures may only be taken so as to persuade the responsible state to comply with its international obligations, namely, to terminate continuous wrongful conduct and to provide reparation to all injured parties.
- ii. Countermeasures should not be envisioned as a form of punishment for a wrongful conduct, but merely as a tool for forcing compliance with international obligations and norms.<sup>40</sup>

In short, when an international dispute arises, consequent to an infringement of one of the norms embedded in international law, and the dispute cannot be settled by peaceful means, the aggrieved party has the opportunity to use a string of countermeasures that are coercive in nature against the wrongdoing state, but should strictly follow the procedure and mandate of such measures.<sup>41</sup>

Although the rules of international law in general, and the rules specific to international humanitarian law in particular, recognize certain forms of economic sanctions, these provisions in no way justify that sanctions be turned into a kind of collective punishment of peoples. Since the end of the Cold War, the UNSC has progressively resorted to imposing sanctions both in peacetime and in times of armed conflict.<sup>42</sup> Such actions have raised concerns from humanitarian organizations that have observed the severe humanitarian consequences of these impositions not only on the humanitarian situation of the targeted population, but also on the delivery of humanitarian aid.<sup>43</sup>

In recent decades, it has become necessary to develop and examine the legal framework in this context. It has also become imperative that the limits under which such sanctions could be im-

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37. *Hungary v. Slovakia*, case concerning the *Gabčíkovo-Nagymaros* Project, ICJ Reports (1998) 1, at 47 (paras 82-87) Judgement of 2 Sep. 1997).

38. *US v. EU*, *Banana Dispute between the US and the EU*, WTO Secretariat, *European Communities-Regime for the Importation, Sale and Distribution of Banana: Resources to Arbitration by the European Communities Under Article 22.6 of the DSU*, Decision by the Arbitrators, WT/DS27/ARB (April 9, 1999).

39. *Gabčíkovo-Nagymaros* case, *supra* note 37, paras 83-87.

40. "The limited object and exceptional nature of countermeasures are indicated by the use of the word 'only' in paragraph 1 of Article 49." *The (ILC) Draft Articles on Responsibility of States*, *supra* note 33, p. 130.

41. Dumitrița Florea & Natalia Chirtoacă, *Sanctions in international public law*, Vol. 13 Issue 1(17) *The USV Annals of Economics and Public Administration* 270 (2013).

42. Cortright & Lopez, *supra* note 7.

43. Many years since the UN-mandated sanctions against Iraq, advocates of human rights continued adopting a strong view that the UNSC uses "sanctions of mass destruction" by relying on the economic sanctions as embedded in the UN Charter. They have always debated that there is a necessity for producing a clear law on sanctions. Unfortunately, the result of these debates concluded one finding: that the UNSC is free to use sanctions whenever it deems necessary, and that the UNSC mandates regarding sanctions ought to be comprehensive and enforceable.

posed are articulated, and that the political reasons for imposing limits on the UNSC's authority to use sanctions is similarly clarified. Human rights advocates have turned their attention on to how to limit the use of sanctions and their unwanted effects, especially when sanctions are imposed unilaterally and outside the UNSC framework. The discussions on strengthening and clarifying the legal norms in this area have, in recent years, escalated into a broad-based chorus.

The imposition of sanctions by one sovereign state against another can either be peaceful or hostile in character. Peaceful sanctions are used where no hostility exists between the two involved states. In contrast, hostile sanctions are intended to harm the targeted state and are used in a purely nefarious sense.

#### A. Peaceful Sanctions or Blockades

Peaceful sanctions or a peaceful blockade is carried out to compel the blockaded state to respect its international obligations. Such measures may also be designed to discourage more infringements of international law. Clear examples of such actions can be seen in conflict zones where military forces are isolated or restricted from entering certain areas, such as a particular city or sea ports. Although no declaration of a state of war is made by the blockading state, the blockade is carried out using the naval forces of the blockading states.

#### B. Hostile Sanctions or Blockades

A hostile type of blockade generally aims to establish a range of armed forces around a particular location, such as a city, camp, or fortress, to compel the besieged to surrender after munitions or food supplies have run out.<sup>44</sup>

Here, of course, one has to differentiate between the different forms of sanctions, i.e., military, economic, and political. While both treaty law and customary international law clearly and strictly prohibit resorting to military coercion, the legitimacy of economic and political coercion remains to be clarified and needs greater investigation. Many would argue that the definition of these two forms of coercion is still ambiguous and that we need a clear and uncontroversial definition for both before we delve into legally prohibiting their use.

However, in this respect, one can simply argue that the ambiguity of definitions cannot be taken as a reason for the inability to outlaw certain actions. For instance, in outlawing the "threat or use of force" or "intervention," international customary law has developed rapidly in producing these two distinct principles. Yet, these principles could be read in an overlapping manner in many instances. Three ICJ cases support this conclusion. The *Corfu Channel case*,<sup>45</sup> the infamous *Nicaragua v. United States case*,<sup>46</sup> and the *DRC v. Uganda case*<sup>47</sup> have all found that there

44. One of the early models of this type took place in 1584 when the rebellious Dutch territories announced the ports of Flanders, which were under Spanish control at the time, as besieged ports. This was followed by the Napoleonic Wars that targeted certain cities to include all enemy coasts. See generally John L. Motley, *History of the United Netherlands from the Death of William the Silent to the Twelve Year's Truce*, Complete (1584-1609) (Library of Alexandria, 2004).

45. *UK v. Albania (Corfu Channel case)*, ICJ Reports 1949.

46. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, ICJ Reports 1986.

47. *Case concerning Armed Activities on the Territory of the Congo*, ICJ Reports, 2005.

is an overlap between the principle prohibiting the use of force and the principle prohibiting intervention. Despite the overlap, these two principles remained separate.

However, what is clear is that although sanctioning states cannot be held responsible for boycotting other states, they could still be held responsible if they “intentionally seek to violate the rights in question or pursue policies that are blatantly harmful to those rights that they fail to meet a minimum standard of compliance.”<sup>48</sup> As a conclusion, it could be argued that resorting to economic and political sanctions should at least be outlawed if taken in an unauthorized and dictatorial fashion.<sup>49</sup>

### **Orthodoxies of International Law and Sanctions as It Relates to the GCC Crisis**

As outlined above, countermeasures should not be intended as a form of penalty for a wrongful conduct. All that countermeasures are for is to be used as tools for achieving compliance with the norms of international obligations. Therefore, countermeasures form a type of encouragement for the responsible state to comply with its obligations, to end all appearances or continuation of wrongful conducts, and, as far as possible, to provide reparation to injured states.<sup>50</sup>

Going beyond countermeasures and levying a form of “blockade” on a sovereign state attracts certain restrictions in international law. Some scholars may even argue that the UNSC, when commanding and imposing economic sanctions, is not restricted by international human rights law or even international humanitarian law, as Articles 25 and 103 of the UN Charter determine the contractual obligations of member states in assisting in maintaining international peace and security.<sup>51</sup> Yet, such a belief is not entirely accurate. Article 1, paragraph 2, of the UN Charter determines that states are collectively bound by the “principles of justice and international law” in applying the UN Charter, as well as by the necessity to adjust or settle international disputes that might lead to a breach of the peace. States may only invoke Article 41 when the circumstances of a threat or breach of the peace become apparent, and if the purpose of imposing the sanctions is solely undertaken to maintain or restore international peace and security. As a result, the UNSC is bound to a standard of “proportionality.” Suggesting otherwise appears to contradict Article 24(2) of the UN Charter which provides that, “In discharging [its] duties, the Security Council shall act in accordance with the Purpose and Principles of the United Nations.”<sup>52</sup>

Accordingly, and based on human rights law, international humanitarian law, and humanitarian needs, the sanctions regime should not reduce the standard of living of a large population below the level of survival. Sanctions should in no way deprive people of their basic human rights to life and survival. Observation of the principle of “proportionality” has thus emerged

48. Stephen P. Marks, *Economic Sanctions as human rights violations: Reconciling Political and public health imperatives* 89 Am. J. Pub. Health 1509 (1999), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1508798/> (last visited Nov. 4 2017).

49. Opinion shared with Natalino Ronzitti in Chiara Franco, *Coercive Diplomacy, Sanctions and International Law*, ISSN 2280-6164, 2015 IAI, p. 3.

50. The (ILC) Draft Articles on Responsibility of States, *supra* note 33, p. 130.

51. *Ibid.*

52. On this, see the opinion of Delbruck, *Article 1*, in Bruno Simma et al., *The Charter of the United Nations: a Commentary*, 621 (1995).

as one general limitation on acts of coercive nature in international law.<sup>53</sup> In practice, however, it is noted that despite the vitalness of this principle as a significant element in measuring the legality of the imposed sanctions, this principle seems to fall short in eliminating all undesired effects of the imposed sanctions, especially in deploying sanctions during armed conflicts. Even then, international humanitarian law produces certain principles that should also apply to the case when a state is held under a mere maritime siege:

- Civilians must not be deprived of essential supplies for their lives.
- Starving civilians as a warfare method is outlawed, and the imposition of encirclement, blockade, or any system of economic sanctions to starve the civilian population is prohibited.
- Humanitarian agencies and other states should be permitted to pass relief items under certain conditions and to provide adequate assistance.
- States shall permit free passage of medical and hospital goods, and objects required for civilians' worship.
- States shall allow free passage of food, clothing, and essential nutrition for children under the age of fifteen, pregnant women, and maternity cases.

There are also specific principles that relate to international human rights law. During peace, penalizing a state by sieging it via banning it from air, land, or sea amounts to a turning point from a state of peace to a state of war, even though no use of armed force has occurred. In such circumstances, human rights instruments recognize certain rights to be preserved, such as the right to life, clothing, housing, and medical care, among many others. These instruments oblige states to work toward the fulfillment of those rights, even if it were the UNSC mandating the blockade. The UNSC should take these rights into account when establishing a system of sanctions and should not institute systems of sanctions that deprive people of these rights.

Accordingly, sanctions should not deprive the population of their minimum basic goods and services necessary to sustain their lives. The International Covenant on Economic, Social and Cultural Rights (ICESCR) declares in Article 11 that “1) *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living...including adequate food, clothing and housing...; 2) The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programs, which are needed: (a) To improve methods of production, conservation and distribution of food..., and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.*”<sup>54</sup>

53. See M. Ahmad et al., *International Humanitarian Law: Scope and Challenges* (author's translation from Arabic), Part 3, 134 (Al Halabi Publications, 2005); also Abdullah Al Ashaal et al., *International Humanitarian Law: Scope and Challenges* (The Author's translation from Arabic), Part 3, 911 (Al Halabi Publications, 2005).

54. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights* 993 United Nations, Treaty Series 3 (1966), <http://www.refworld.org/docid/3ae6b36c0.html> (last visited Oct. 29, 2017).

The rights above mean that it is illegal to deliberately act in such a way as to deprive individuals of sources of food. In parallel, the Genocide Convention protects the so-called “collective right to life,” that is, the deliberate starvation of any national, racial, or religious group if committed with the intention of destroying this group is prohibited. Here, it is worth noting that the prohibition of genocide applies both in peacetime and in wartime. The practice of the UNSC tends to include humanitarian exceptions in comprehensive sanctions regimes, whether sanctions are imposed during times of armed conflict or in peacetime. The meaning of this is that humanitarian concerns should be observed whether sanctions are imposed during times of armed conflict or in times of peace. During times of armed conflict, these humanitarian concerns are expressed through international humanitarian law, and in times of peace, these concerns are expressed through human rights law.

Moreover, the 1948 Universal Declaration for Human Rights stresses the above framework by stating that “everyone has the right to life, liberty and security”. This statement comes as an added manifestation to what has been most importantly included in the UNCH itself, where its preamble states, “*We the peoples of the United Nations determined...to save succeeding generations from the scourge of war,..., and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person,...and...to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and...and for these ends...to practice tolerance and live together in peace with one another as good neighbors, and...to unite our strength to maintain international peace and security, and...to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and...to employ international machinery for the promotion of the economic and social advancement of all peoples.*”<sup>55</sup>

The use of sanctions has mainly surfaced as a forceful measure in replacement of the internationally prohibited use of armed forces, or in preparation for it. The imposition of sanctions on Iraq during the 1990s has been the most comprehensive of all since the United Nation’s inception. Since then, the magnitude of scholarly debate on the effectiveness and legality of sanctions has intensified. Imposing economic sanctions as a middle ground between a failed use of diplomacy and the actual use of force has driven the international community, and modern-day international law, to develop a cautious attitude toward the viability of using such coercive measures, particularly if used unilaterally. A few principles of public international law can be recalled in this context.

First, the principle of “sovereignty” surfaces as one basic internationally known customary international legal norm. This foundational principle directly conflicts with the permissibility of sanctions. This norm is presented as the single most important pillar principle in international law and international relations. Steven Krasner refers to at least four distinct types of sovereignty with distinct definitions:

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55. Proclaimed by the UNGA in Paris on December 10, 1948 (General Assembly resolution 217 A): <http://www.un.org/en/universal-declaration-human-rights/index.html> (last visited Oct. 29, 2017).

- “International legal sovereignty, referring to mutual recognition between territorial entities that have formal juridical independence.
- Westphalian sovereignty, in referring to sovereignty as the exclusion of external actors from authority structures within a given territory.
- Domestic sovereignty, which refers to the political authority within a state and its ability to exercise effective control within its borders.
- Interdependence sovereignty, which refers to the ability of a state’s public to regulate across the borders of their state.”<sup>56</sup>

In short, sovereignty encompasses internal (domestic) sovereignty and external (international) sovereignty.

Second, the “non-intervention” principle is another major principle of public international law relevant to this context. This principle provides that states should stay out of one another’s affairs as long as the effective control over their affairs is apparent.<sup>57</sup> This principle also means that states should interact only with the recognized sovereign of one another. Here, public international law offers two main rationales for this principle. First and foremost is to maintain stability,<sup>58</sup> and the second is that non-intervention works as a guarantee of equality between states in the international state system. It also acts as insurance against another era of colonialism—one of the manifestations of the UN Charter.

## Conclusion

In light of what the state of Qatar has recently suffered from its neighboring states, it could be argued that the economic sanctions imposed on Qatar produced a case of the unauthorized imposition of sanctions. The unilateral actions of the quartet have generated controversies and international resentment. Their dubious application of sanctions that have blockaded the tiny state of Qatar represents a breach of international legal norms embedded in both customary and treaty law.

While there is difference between unilateral and multilateral sanctions, in the case of Qatar the distinction is less pronounced. By simply examining the geography of Qatar, it is clear that the small size of this peninsula in the east of Arabia, with only one land border with Saudi Arabia, and occupying no more than 11,437 square kilometers (4,416 square miles), renders unilateral actions essentially the same as multilateral actions.<sup>59</sup> A Saudi air and sea blockade of Qatar is therefore a devastating imposition. Despite terms such as “boycott” and “restrictions” being bandied about by the quartet, it is crystal clear that what is happening to Qatar is a blockade.

56. Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* 3-4 (1999).

57. See Usha Natarajan, *TWAIL and the environment: The state of nature, the nature of the state, and the Arab Spring*, 14 *Or. Rev. Int’l L.* 177 and 185 (2012).

58. It could be noted that following the devastating thirty years war in Europe (1618-1648), the Peace of Westphalia can be described as one vital effort to reduce the instabilities caused by states interfering in the affairs of others. Since then, non-intervention gradually has become a general norm. See J. Bryan Hehir, *Intervention: From theories to cases*, 9 *Ethics & Int’l Aff.* 1-4 (1995).

59. See [https://en.wikipedia.org/wiki/Geography\\_of\\_Qatar](https://en.wikipedia.org/wiki/Geography_of_Qatar) (last visited Oct. 29, 2017).

Wherever conflict occurs, ending it by resorting to coercive measures is particularly undesirable simply because a potential would exist for either violence or at least harmful consequences. In the international arena, the absence of goodwill to get involved is a generally accepted threshold for dispute resolution that can easily escalate the conflict into a highly destructive stance. Indeed, the course of any conflict depends on how its parties manage their disagreements. To this end, international law offers three possible courses of actions: unilateral, bilateral, or third-party interventions.<sup>60</sup> What matters for a peaceful dispute resolution would be either a bilateral action or a third-party intervention. The first implies some form of compromise through negotiation, whereas the latter is some form of intervention of a third party, i.e., through adjudication or mediation. Both forms of conflict resolution mechanisms are considered the primary non-coercive methods for conflict settlement, no matter what level the conflict has reached. Both mechanisms represent a joint, voluntary decision-making process. These paths have far greater advantages and fewer risks for all parties than unilateral methods.<sup>61</sup> These mechanisms also have the practical benefit of producing a more proportionate action with respect to the dispute itself.

Accordingly, one can deduce that although negotiation and mediation are well-formed in the international arena, it seems that the actions taken by Saudi Arabia alone simply represent the imposition of a disproportionate unilateral sanctions regime against Qatar without prior, or later, endorsement from the UN. Irrespective of the differences in the nature of the imposed sanctions on the state of Qatar, these sanctions can all be classified as trade-disrupting measures, positioned somewhere between the sound use of diplomacy and the unwanted resort to military engagement, or at least between diplomacy and the disruption of international peace and security. This is why one should think of the principles of public international law as one vital medium for the resolution of this dispute. For the benefit of international order and the maintenance of peace, law and international legality ought to prevail rather than any coercive measures imposed unilaterally or imposed in an unauthorized manner.

If it is to be assumed that the series of intense events leading to the imposition of sanctions by Saudi Arabia, UAE, Bahrain, and Egypt on Qatar is a full-fledged siege, then under customary international law, blockading another sovereign in such a manner is deemed as an act of war. However, the acts leading up to the blockade of Qatar did not involve military intervention, nor was there a direct threat to use force. Nonetheless, the acts leading to the blockade of Qatar as a sovereign can only be considered legitimate if carried out within the limits imposed by international law, namely the economic embargo provided for by Article 41 of the UN Charter (or the state of a military blockade provided for in Article 42), and if carried out by the UNSC, provided there was a breach of international peace and security.

When an international dispute arises, consequent to an infringement of one of the norms embedded in international law, and that infringement cannot be resolved by peaceful means, the victimized party has the opportunity to use a series of limited countermeasures (that may be

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60. Jacob Bercovitch & Allison Houston, The study of international mediation: Theoretical issues and empirical evidence, in Jacob Bercovitch ed., *Resolving International Conflicts: The Theory and Practice of Mediation* (Lynne Rienner, 1996)

61. Dean G. Pruitt & Peter J. Carnevale, *Negotiation in Social Conflict* (Open University Press, 1993).

coercive in nature) against the wrongdoing state. However, any countermeasures must be proportionate to the risk and should strictly follow the procedure and mandate of such measures. In such cases, specific tools for dispute settlement must first be exhausted. The main objective of these coercive measures is to restore order and bring the wrongdoer to negotiations. However, sanctioning states cannot be held responsible for boycotting another state, although they could still be held responsible if they “intentionally seek to violate the rights in question, or pursue policies that are blatantly harmful to those rights that they fail to meet a minimum standard of compliance.” In the end, what is abundantly clear is that the international legal framework is lacking when it comes to regulating economic, as well as political, sanctions. Such actions should be addressed to bring unilateral, unauthorized actions into the realm of the international rule of law.

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