

By Invitation

Small countries must be self-reliant

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This is another view of the Qatar crisis and the lesson it holds for Singapore. A commentary last week by Professor Kishore Mahbubani, dean of the Lee Kuan Yew School of Public Policy at the National University of Singapore, has triggered debate over how small states should approach foreign policy.

On June 5, Saudi Arabia, the United Arab Emirates (UAE), Bahrain and Egypt separately announced that they were breaking off diplomatic relations with Qatar.

In addition, Saudi Arabia closed its land border with Qatar. The three Gulf States - Saudi Arabia, UAE and Bahrain - and Egypt:

- gave Qatari diplomats 48 hours to leave their territories;
- Saudi Arabia, UAE and Bahrain also gave Qatari citizens and residents two weeks to leave their territories;
- forbade Qatar from using their airspace;
- forbade Qatar's ships from visiting their ports;
- announced that Gulf Air, Egypt Air, Emirates, flydubai, Air Arabia, Saudi Arabian Airlines and Etihad Airways will suspend their flights to and from Qatar;
- and announced that Qatar would be expelled from the Saudi Arabian-led coalition in Yemen.

On June 22, the four countries issued a 13-point ultimatum to Qatar and gave it 10 days to comply.

Following mediation by Kuwait, the Qataris were subsequently given a 48-hour extension and agreed to provide their response to the demands by yesterday. The four countries will meet in Cairo tomorrow to consider the response.

CUTTING TIES AND EXPULSION OF DIPLOMATS, CITIZENS

The first legal question I wish to discuss is whether the four countries have the right under international law to break off their diplomatic relations with Qatar.



The answer is yes. A country has the sovereign right to decide whether and, if so, when and on what terms to establish diplomatic relations with another country. By the same token, a country also has the sovereign right to decide whether it wishes to break off its diplomatic relations with another country. Qatari diplomats were given 48 hours to leave the territories of Saudi Arabia, UAE, Bahrain and Egypt. Qatari citizens were given 14 days to leave Saudi Arabia, UAE and Bahrain.

Are the actions of the four states consistent with international law?

I think the expulsion of Qatari diplomats in 48 hours is probably consistent with international practice. However, the expulsion of the citizens of Qatar has raised objections from several important quarters. The United Nations High Commissioner for Human Rights,

Prince Zeid Ra'ad Al Hussein, issued a statement on June 14 stating: "I am alarmed about the possible impact on many people's human rights in the wake of the decision by Saudi Arabia, UAE, Egypt and Bahrain to cut diplomatic and economic ties with Qatar.

"It is becoming clear that the measures being adopted are overly broad in scope and implementation and having the potential to seriously disrupt the lives of thousands of women, children and men, simply because they belong to one of the nationalities involved in the dispute.

"Among those likely to be badly affected are couples in mixed marriages, and their children; people with jobs or businesses based in states other than that of their nationality; and students studying in another country."

He said he was also extremely troubled to hear that the UAE and Bahrain are threatening to jail and fine people who express sympathy for Qatar or opposition to their own governments' actions, "as this would appear to be a clear violation of the right to freedom of expression or opinion".

Amnesty International has also criticised Saudi Arabia, UAE and Bahrain. Mr James Lynch, deputy director of Amnesty's Global Issues Programme, said: "These drastic measures are already having a brutal effect, splitting children from parents and husbands from wives. People from across the region - not only from Qatar, but also from the states implementing these measures - risk losing jobs and having their education disrupted."

The human rights of Qatar's citizens and the human cost of the expulsion order appear to have evoked the sympathy of the international community.

As a result, Saudi Arabia, UAE and Bahrain have relaxed the edict in respect of Qatari citizens married to their citizens. Qatari haj and umrah pilgrims have also been exempted by Saudi Arabia.

Egypt has decided not to expel Qatari citizens or to request that Egyptians in Qatar return home. Qatar has also decided to take its case to the UN Human Rights Council in Geneva.

QATAR AIR AND MARITIME RIGHTS

The next question is whether the action taken by Saudi Arabia, UAE, Bahrain and Egypt to ban Qatar Airways and other Qatar-registered aircraft from entering their airspace is a violation of Qatar's rights under international law.

On June 8, the chairman of the Civil Aviation Authority of Qatar wrote to the president of the Council of the International Civil Aviation Organisation (ICAO) requesting its intervention in the dispute, in accordance with Article 84 of the Chicago Convention. Article 84 prescribes the dispute-settlement mechanism under the Chicago Convention.

Qatar alleges that UAE, Bahrain and Egypt have acted in violation of the International Air Services Transit Agreement (IASTA).

Article 1 (1) of the IASTA imposes on a contracting party the obligation to grant to all contracting parties "the following freedoms of the air in respect of scheduled international air services: (1) the privilege to fly across its territory without landing; (2) the privilege to land for non-traffic purposes".

In its defence, the UAE has referred to UN Security Council Resolution 2309, which affirms that a state has sovereignty over its airspace and that states have the responsibility to protect the security of citizens and nationals against terrorism in a manner consistent with existing obligations under international law.

Qatar accuses Saudi Arabia, UAE, Bahrain and Egypt of violating Article 9 of the Chicago Convention. Article 9 permits a contracting party, for reasons of military necessity or public safety, to prohibit the aircraft of all states from flying over certain areas of its territory. In the present case, only one state has been targeted and the requirement of "military necessity" and "public safety" has not been invoked or proven.

Qatar also accuses Bahrain of seeking to create a military buffer zone, beyond Bahrain's territorial airspace, and to prohibit Qatari aircraft from entering the said zone. According to Qatar, the so-called military buffer zone will be over the exclusive economic zone or the high seas. Qatar argues that Bahrain's action is a violation of Qatar's rights under Article 87 (1)(b) of the UN Convention on the Law of the Sea (Unclos).

The bottom line is this: The actions of Saudi Arabia, UAE, Bahrain and Egypt would appear to have violated Qatar's rights under the International Air Services Transit Agreement, the Chicago Convention and Unclos.

Qatar has referred the dispute to the council of ICAO. We will have to wait and see how the council tries to settle the dispute.

Saudi Arabia and Bahrain have closed their ports to all vessels flying the Qatari flag. The UAE's Abu Dhabi Petroleum Ports Authority has expanded its ban to include "all vessels arriving from or destined to Qatar, regardless of its flags". Egypt has banned Qatari ships from its ports but they can still access the Suez Canal.

More recently, the UAE has announced that foreign-registered ships are allowed to call at UAE's ports, even if they are travelling to or from Qatar, as long as cargo of Qatari origin is not loaded or unloaded in the UAE and cargo of UAE origin is not loaded or unloaded in Qatar.

HAVE QATAR'S RIGHTS BEEN VIOLATED?

The question is whether Qatar's rights, under international law, have been violated.

Ports are treated by international law as part of the sovereign territory of the coastal state. A coastal state may deny a neighbouring state the right to use its ports. There does not appear to be any International Maritime Organisation (IMO) treaty which confers on states the right for their ships to enter the ports of other states. The conclusion is that there is nothing Qatar can do legally to challenge the ban imposed by its neighbours on Qatar's ships from entering their ports. In view of the above, IMO would be unable to help Qatar.

The world is a dangerous place for small countries. This is why, as a matter of survival, they stress the importance of the rule of law in relations among states and rules-based regional and world orders. International law can, to some extent, serve as a shield and a sword for small countries.

By hosting a major airbase of the United States, 11,000 of its military personnel and the forward headquarters of its central command, Qatar has every right to assume that the US would protect it against its neighbours.

Contrary to Doha's expectation, the leader of the superpower has expressed support for its big neighbour against Qatar. Institutions like the Defence Department and State Department took some time before lending balance to the White House position.

The lesson learnt is that, at the end of the day, a small country must develop the capacity to defend itself. It cannot depend on others to do so.

- **The author is chairman of the board of governors of the Centre for International Law at National University of Singapore.**