**The Gulf Crisis -- Could it Bring "State-to-State Arbitration" to the Region?**

In June 2017, Saudi Arabia, the United Arab Emirates (UAE), Bahrain and Egypt cut diplomatic, trade and travel ties with Qatar and imposed a blockade on the Gulf state, accusing it of supporting terrorism and developing a relationship with their regional rival, Iran; but Qatar has denied the allegations.

This crisis between the Gulf states is unprecedented and has disrupted many businesses in the region and caused them significant losses. In the international arena, this is not novel. A number of neighbouring countries have had issues between themselves, either political or economic, such that relationships and interests have been adversely affected. Invariably, there will be disputes arising between the affected states, and claims brought by the nationals of one state against another state.

Arbitration is the preferred method to resolving disputes between states. There are various routes that states can take to resolve political or commercial disputes arising between them. This article aims to shed some light on some of the well-recognized avenues of international dispute resolution.

1. ***Permanent Court of Arbitration (PCA)***

The Permanent Court of Arbitration (PCA), located in the Hague, is an intergovernmental organization that serves as, amongst other things, an arbitration tribunal to resolve disputes between member states, international organizations, or private parties arising out of international agreements. The cases span a range of legal issues involving territorial and maritime boundaries, sovereignty, human rights, international investment, and international and regional trade. The PCA is constituted through two separate multilateral conventions dated 1899 and 1907, respectively, with a combined membership of 121 states[[1]](#footnote-1).

The blockading countries – i.e., Saudi Arabia, the UAE, Bahrain and Egypt – as well as Qatar have all ratified the 1907 Convention for the Pacific Settlement of International Disputes. Under this Convention, member states can opt for settlement of their differences through mediation or arbitration, instead of having recourse to force. Article 53 of the said Convention provides that the PCA can be used where: (i) there is a *compromis* to submit a dispute to the PCA, (ii) the parties have a separate agreement to submit a dispute to the PCA (e.g., in a treaty), or (iii) a dispute arises from debts claimed by one state owing to the national of another state, provided the parties have agreed to resolve such disputes by arbitration.

The PCA provides full case administrative support in arbitrations under the UNCITRAL Arbitration Rules, particularly in cases involving a state, a state-controlled entity, or an intergovernmental organization. Currently, the PCA is administering seven active state-to-state arbitrations. Public information is available on five of these arbitrations, four of which involve boundary disputes: (1) a maritime and territorial dispute between Croatia and Slovenia; (2) a maritime dispute between Mauritius and the United Kingdom; (3) a dispute over the diversion of a river between Pakistan and India; (4) a maritime dispute between Bangladesh and India; and (5) a dispute over an “effect means” provision in a bilateral investment treaty between Ecuador and the United States.[[2]](#footnote-2)

1. ***Special-purpose tribunals***

Another way of resolving disputes arising between states is for the conflicting states themselves to set up special tribunals to address these disputes.

The best example for this is the Iran-United States Claims Tribunal. This is an international arbitral tribunal that was established on 19 January 1981 pursuant to an agreement (mediated by Algeria) between the United States and Iran to resolve the Iran hostage crisis (known as the Algiers Accords or Declarations). The Iran-US Claims Tribunal has jurisdiction to decide claims of US nationals against Iran and of Iranian nationals against the US that arise out of debts, contracts, expropriations or other measures affecting property rights; certain official claims between the two governments relating to the purchase and sale of goods and services; disputes between the two governments concerning the interpretation or performance of the Algiers Declarations; and certain claims between US and Iranian banking institutions. The Tribunal has adopted the UNCITRAL Arbitration Rules in slightly modified form, and has to date concluded over 3,900 cases[[3]](#footnote-3).

The Gulf states affected by the current blockade might follow this route and agree to establish a specialized arbitral tribunal to consider the disputes arising from or in connection with the blockade. The jurisdiction of such a tribunal might extend to claims relating to the current crisis made by one private entity against another or against a state.

1. ***ICSID***

With respect to foreign investors whose interests have been adversely affected by the current blockade, they are able to seek a remedy against the concerned state by submitting a claim to the International Centre for the Settlement of Investment Disputes (ICSID) when the state in question has agreed to submit investment disputes to ICSID, either through agreement, bilateral/multi-lateral investment treaties, or legislation. ICSID is an international arbitration institution established in 1965 by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention). According to the ICSID Convention, which entered into force on October 14, 1966, ICSID has jurisdiction over legal disputes arising from investments between a contracting state and a national of another contracting state.

The ICSID Convention has been ratified by 153 contracting states, including the blockading countries and Qatar. ICSID has its own procedure and arbitration rules and has to date concluded more than 420 cases[[4]](#footnote-4).

1. ***Other forums***

In addition to arbitration, there are other international forums before which a state can sue a state. The International Court of Justice and the World Trade Organization are two examples.

1. ***International Court of Justice (ICJ)***

The ICJ, which has its seat in the Hague, is the principal judicial organ of the United Nations (UN). It was established in June 1945 by the Charter of the United Nations and began work in April 1946. It settles legal disputes between member states and gives advisory opinions to authorized UN organs and specialized agencies. The ICJ comprises a panel of 15 judges elected by the General Assembly and Security Council of the UN for nine-year terms.

The ICJ can only assert jurisdiction over a particular dispute with the prior consent of the concerned states. This can be accomplished: (i) by special agreements (an ad hoc agreement when a dispute arises), (ii) by submission to jurisdiction in treaties and conventions, and (iii) where a state has made a declaration submitting itself to the compulsory jurisdiction of the ICJ. Egypt, for example, has submitted to the jurisdiction of the ICJ, but none of Qatar, Saudi Arabia, the UAE or Bahrain have done so. Accordingly, in order for the ICJ to assert jurisdiction over any dispute between the states affected by the current crisis in the Gulf, there would need to be a special agreement to submit such a dispute to the ICJ.

1. ***Dispute Settlement Body of the World Trade Organization (WTO)***

The Dispute Settlement Body (DSB) established under the auspices of the WTO makes decisions on trade disputes between WTO members. The DSB has authority to establish dispute settlement panels, refer matters to arbitration, adopt panel, appellate body and arbitration reports, maintain surveillance over the implementation of recommendations and rulings contained in such reports, and authorize suspension of concessions in the event of non-compliance with those recommendations and rulings. All of Qatar, Saudi Arabia, the UAE, Bahrain and Egypt are members of the WTO, which makes it a potential venue for the settlement of trade-related disputes.

Given the various avenues that exist, one might soon expect to see state-to-state proceedings between the countries implicated by the Gulf crisis, especially after Qatar's foreign ministry spokesperson, Lulwa Al Khater, said in a press conference held in Doha on January 10, 2018 that Qatar has begun pursuing international arbitration to end the blockade.[[5]](#footnote-5)

In the meantime, Kuwait is playing an important role in trying to contain the crisis. The international community has commended Kuwait's efforts and hopes that it succeeds in putting an end to the crisis. Nevertheless, the crisis has already resulted in serious legal and economic consequences; and the more it continues, the greater these consequences are likely to be.

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1. [www.pca-cpa.org](http://www.pca-cpa.org) [↑](#footnote-ref-1)
2. Kluwer arbitration. [↑](#footnote-ref-2)
3. [www.iusct.net](http://www.iusct.net) [↑](#footnote-ref-3)
4. <https://icsid.worldbank.org> [↑](#footnote-ref-4)
5. [www.aljazeera.com](http://www.aljazeera.com) [↑](#footnote-ref-5)