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Game of Thrones: The Qatar Crisis, Forced Expulsions on the Arabian Peninsula

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GAME OF THRONES: THE QATAR CRISIS, FORCED EXPULSIONS ON THE ARABIAN PENINSULA

*Christopher R. Rossi**

ABSTRACT

In an extraordinary move, reflecting the Arabian Peninsula's worst diplomatic dispute in decades, the UAE, Saudi Arabia, Bahrain, and Egypt have expelled Qatari nationals and imposed an air and sea blockade against Qatar because of its alleged support of terrorist organizations. In June 2018, Qatar filed suit against the UAE at the International Court of Justice, alleging discrimination in violation of the International Convention on the Elimination of All Forms of Racial Discrimination. This Article explores the problem of forced expulsion and the utility of formal judicial redress at the level of the ICJ. Borrowing from the frame analysis of Erving Goffman, this clash portrays the dispute in terms of ceremonial performance (dramaturgy) that better suggests its removal to softer, more discursive forums for dispute settlement, such as the Gulf Cooperation Council ("GCC"). Although already described as a major victim of this dispute, the GCC may better preserve the dynamics of purposeful negotiation involving a situation that bears resemblance to a family feud as much as a clash of state interests. This dispute highlights the expanding problem of nationality, migration, and human rights in an age of terror, and the limits but need of informal international legal means to best frame meaningful solutions to an expanding problem. The twentieth century's experience with the problem of forced migration indicated the need for international legal reforms. The current problem on the Arabian Peninsula signifies clearly that the project to address the issue continues. This Article explores the problem of forced expulsion and the utility of formal judicial redress at the level of the ICJ. After reviewing the history of hospitality and expulsion, this Article factors into the discussion the motivational fear of terrorism and frames the discussion against the backdrops of competing UAE and Qatari claims. The utility of litigating this case before the ICJ is then assessed in terms of substance and dramaturgy, leading to a reconsideration of the value of a soft law solution, perhaps in a way that can reinvigorate the GCC, which has been badly damaged by the dispute.

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I. INTRODUCTION

On June 11, 2018, the State of Qatar, located on the northeastern headland of the Arabian Peninsula and surrounded by Saudi Arabia and the Persian Gulf, filed suit against the United Arab Emirates (“UAE”) at the International Court of Justice (“ICJ”).¹ Article 36 of the Statute of the ICJ provides that the Court’s jurisdiction comprises “all matters specially provided for . . . in treaties and conventions in force.”² In its complaint, Qatar alleged that the UAE had violated the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”), to which both parties belong.³ This case again tests the jurisdictional limits of this

¹ See Interpretation and Application of the International Convention on the Elimination of all Forms of Racial Discrimination (The State of Qatar v. The United Arab Emirates), Application Instituting Proceedings (June 11, 2018), <https://www.icj-cij.org/files/case-related/172/172-20180611-APP-01-00-EN.pdf> [hereinafter Qatar v. UAE Application]. See also International Court of Justice Press Release, No. 2018/26 (June 11, 2018), <http://www.icj-cij.org/files/case-related/172/172-20180611-PRE-01-00-EN.pdf> [hereinafter Press Release].

² Statute of the International Court of Justice, art. 36(1), <https://www.icj-cij.org/en/statute>.

³ Qatar alleged violations of Arts. 2, 4, 5, 6, and 7. See International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195 (*entered into force* Jan. 4, 1969) [hereinafter

convention, which Georgia unsuccessfully invoked against Russia for its interventions in South Ossetia and Abkhazia,⁴ and Ukraine currently tests against Russia's 2014 annexation of Crimea and its treatment of Ukrainian and Tatar minorities.⁵ In addition to the individual human rights harms alleged, the Court likely will determine CERD's jurisdictional applicability to the travel embargo and media restriction complaints.

Qatar accused the UAE of targeting Qataris based on their national origin,⁶ in violation of CERD's prohibition against racial

CERD]. See also Press Release, *supra* note 1, at 1. Qatar acceded to the CERD on July 22, 1976 and the UAE on June 20, 1974. See U.N. TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang=_en.

⁴ See Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, 2011, I.C.J. 70, (Apr. 1), <https://www.icj-cij.org/files/case-related/140/140-20110401-JUD-01-00-EN.pdf> (holding the Court had no jurisdiction to entertain Georgia's application).

⁵ See, e.g., Application of the International Convention for the Suppression of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Pending Cases, I.C.J., <https://www.icj-cij.org/en/pending-cases>. Additionally, Palestine has filed an inter-state complaint against Israel for breaches of CERD "given the urgency of the situation in the Occupied Palestinian Territory, including East Jerusalem." See *The State of Palestine Lodges an Interstate Complaint Against Israel under the Convention on the Elimination of All Forms of Racial Discrimination*, MINISTRY FOREIGN AFF., ST. PALESTINE (Apr. 24, 2018), <http://www.mofa.pna.ps/en/2018/04/24/the-state-of-palestine-lodges-an-interstate-complaint-against-israel-under-the-convention-on-the-elimination-of-all-forms-of-racial-discrimination/>. See also *Israel Reacts to the CERD Committee's Statement*, MISSION ISR. UNITED NATIONS GENEVA (May 14, 2018), <http://embassies.gov.il/UnGeneva/NewsAndEvents/MediaStatements/Pages/20180504-Israel-reacts-to-the-CERD-Committee-statement.aspx>. Procedures regarding the inter-state complaint process are handled by the Committee on the Elimination of Racial Discrimination in accordance with terms of the Convention. See CERD, *supra* note 3, at Part II (detailing relevant articles governing the committee and its procedures).

⁶ See Qatar v. UAE Application, *supra* note 1, ¶ 3; Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates) Request for the Indication of Provisional Measures, Order, 2018 I.C.J. ¶ 19 (July 23), <https://www.icj-cij.org/files/case->

discrimination. CERD Article 1(1) defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin” which has the purpose or effect of impairing the exercise of human rights on an equal footing in fields of public life.⁷ In addition to objecting to Qatar’s factual allegation, the UAE asserted that Qatar’s claims fall outside the scope of the *ratione materiae* of CERD, and that granting preferences to nationals of a particular country over another, although accenting the individual’s present nationality, do not discriminate on the basis of the individual’s national or ethnic origin: “[t]he UAE considers that the term ‘national origin’ in Article 1, paragraph 1, of CERD is ‘twinned with’ ‘ethnic origin’ and that ‘national origin’ is not to be read as encompassing ‘present nationality.’”⁸

On June 5, 2017, the UAE severed diplomatic ties with Qatar,⁹ expelled all Qataris within its borders, prohibited them from traveling through the UAE, closed UAE airspace and seaports to Qatari nationals, allegedly abridged Qatari rights of protest and free speech,

related/172/172-20180723-ORD-01-00-EN.pdf [hereinafter Qatar v. UAE Provisional Measures].

⁷ CERD, *supra* note 3, art. 1(1).

⁸ Qatar v. UAE Provisional Measures, *supra* note 6, ¶¶ 23, 24. The UAE also argued that the measures it adopted in June 2017 imposed requirements on entry or re-entry into its territory by Qatari nationals and that there has been no mass expulsion of Qataris. *See id.* ¶ 24. The Court concluded that Qatar’s claims “are capable of falling within the scope of CERD *ratione materiae*” and that the Court need not decide at this stage of proceedings whether the expression “national origin” contained in CERD encompasses discrimination based on present nationality. *Id.* ¶ 27. The Court voted in favor of three of nine requested provisional measures: that separated Qatari families be reunited, that Qatari students resume their education in the UAE or be given access to their educational records, and that Qataris be allowed access to tribunals and other judicial organs of the UAE. The Court also ordered the parties to refrain from actions aggravating the dispute. *See* ICJ PRESS RELEASE (Unofficial), No. 2018/36, July 23, 2018, at 4, <https://www.icj-cij.org/files/case-related/172/172-20180723-PRE-01-00-EN.pdf>.

⁹ *See* Patrick Wintour, *Gulf Plunged Into Diplomatic Crisis as Countries Cut Ties with Qatar*, GUARDIAN, (June 5, 2017), <https://www.theguardian.com/world/2017/jun/05/saudi-arabia-and-bahrain-break-diplomatic-ties-with-qatar-over-terrorism> (noting the severance in diplomatic relations among Saudi Arabia, the UAE, Egypt, and Bahrain with Qatar).

and shut down local Qatari media outlets, including the Qatari-owned Al Jazeera Media Network.¹⁰ When announcing its measures, the UAE accused Qatar of destabilizing the region by supporting terrorist organizations.¹¹ Invoking the doctrine of *parens patriae*,¹² Qatar claimed the UAE's actions interfered with marriage and choice of spouse rights, along with rights of free expression, work, property enjoyment, and equal treatment before tribunals.¹³ In an effort to protect Qatari nationals, Qatar requested cessation of discriminatory measures, compliance with CERD obligations, assurance and guarantees of non-repetition, reparations, and provisional measures of protection pending final judgment.¹⁴ Additionally, Qatar explored avenues of redress with the UN International Civil Aviation Organization ("ICAO") in Montreal,¹⁵ and filed a complaint with the World Trade

¹⁰ See *Qatar v. UAE Application*, *supra* note 1, ¶ 3. Qatar also alleged the UAE directly incited hate speech. *See id.* ¶ 4. *See also* S.G. Sreejith, *Legality of the Gulf Ban on Qatari Flights: State Sovereignty at Crossroads* 43 AIR & SPACE L. 191–203 (2018).

¹¹ See *Qatar v. UAE Provisional Measures*, Verbatim Record CR 2018/13 Thursday, June 28, 2018, at 10 am ¶ 6, 11 (Mr. Alnowais: alleging that Qatar illegally funneled one billion dollars "to entities affiliated with terrorist organizations"), <https://www.icj-cij.org/files/case-related/172/172-20180628-ORA-01-00-BI.pdf>. *See also Saudi Arabia, Egypt, UAE, Yemen Sever Ties to Qatar over 'Terrorism' in Biggest Regional Crisis in Years*, STRAITS TIMES (June 5, 2017), <https://www.straitstimes.com/world/middle-east/saudi-arabia-cuts-ties-to-qatar-cites-terrorism>.

¹² A type of wardship originally applied by the court at Common law to commit the mentally ill to the care of others, or to render service under a feudal tenurial system. It grew by the early seventeenth century to associate regal power as the "*Parens patriae*, the political father of his people." Lawrence B. Custer, *The Origins of the Doctrine of Parens Patriae*, 27 EMORY L.J. 195, 201 (1978).

¹³ See *Qatar v. UAE Application*, *supra* note 1, ¶¶ 31–46. During oral proceedings, Qatar claimed "over 3,600 recorded marriages between Qataris and Emiratis" had been affected by the measures. *Qatar v. UAE Provisional Measures*, Verbatim Record 2018/12, Wed. June 27, 2018, 10 am, ¶ 30, 41 (Ms. Amirfar).

¹⁴ See Interpretation and Application of the International Convention on the Elimination of all Forms of Racial Discrimination (*Qatar v. The United Arab Emirates*), Request for the Indication of Provisional Measures of Protection, I.C.J. 2018 (June 11), <https://www.icj-cij.org/files/case-related/172/172-20180611-WRI-01-00-EN.pdf> [hereinafter *Qatar v. UAE Provisional Measures*]. *See also* *Qatar v. UAE Application*, *supra* note 1, ¶¶ 65–66.

¹⁵ See *Qatar Airways Expected To Access New Flight Routes*, ALJAZEERA (July 31, 2017) <https://www.aljazeera.com/news/2017/08/qatar-airways-expected-access->

Organization (“WTO”),¹⁶ which could lead to WTO panel interpretation of the security exception under the General Agreement on Tariffs and Trade (“GATT”).¹⁷

Bahrain, Saudi Arabia, and Egypt—not parties to CERD—supported the UAE action in a “self-described [a]nti-Terror Quartet,” and imposed land, sea, and air blockades on Qatar, in concert with the UAE.¹⁸ Adding to the economic and diplomatic blockade, Saudi Arabia recently revealed plans to dig a canal to separate Qatar from the Arabian mainland—also proposing to construct a nuclear waste site and military base on the southern shore of the newly created island, still within the Saudi frontier separating the two countries.¹⁹ These measures resurrect legal discussions that classify a blockade as an act

air-corridors-170801020434530.html (detailing closed-door discussions with the ICAO to establish contingency air corridors for Qatar’s national airline).

¹⁶ See *Qatar Files WTO Complaints Against The United Arab Emirates, Bahrain And Saudi Arabia*, WORLD TRADE ORG. (Aug. 4, 2017), https://www.wto.org/english/news_e/news17_e/ds526_7_8rfc_04aug17_e.htm (requesting dispute consultations).

¹⁷ See *General Agreement on Tariffs and Trade (GATT 1947)*, WORLD TRADE ORG., art. XXI, https://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm#articleXXI. For a discussion of art. XXI implications, see Johannes Fahner, *Qatar Under Siege: Chances for an Article XXI Case?* EJIL: TALK! (Jan. 9, 2018), <https://www.ejiltalk.org/qatar-under-siege-chances-for-an-article-xxi-case/>.

¹⁸ Simon Henderson, *A Field Trip to the Front Lines of the Qatar-Saudi Cold War*, FOREIGN POL’Y (Sept. 28, 2017), <https://foreignpolicy.com/2017/09/28/a-field-trip-to-the-front-lines-of-the-qatar-saudi-cold-war/>.

¹⁹ Frank Jacobs, *Saudi Arabia Threatens to Turn Qatar into an Island*, BIGTHINK (Apr. 12, 2018), <https://bigthink.com/strange-maps/saudis-threaten-to-turn-qatar-into-an-island>. See also James M. Dorsey, *Saudi Arabia Turns Qatar into an Island*, FAIROBSERVER (Apr. 16, 2018), https://www.fairobsERVER.com/region/middle_east_north_africa/qatar-crisis-saudi-arabia-gulf-news-khaleej-33094/ (detailing plans for a \$750 million, 37.5 mile (60km) canal, 200 meters wide and 20 meters deep on the Saudi Arabian border of the Peninsula).

of war²⁰ and breathe life into the disfavored, early twentieth century idea of the pacific blockade.²¹

Unlike the articulation of human rights in the western tradition, where abstract and political Enlightenment values of liberty and equality take on deep significance, personalized and deeply familial relationships among the Saudis, the Emiratis, and the Qataris inextricably combine with political questions. Frayed, yet deep kinship ties, personalized rivalries,²² and competing understandings of Wahhabism²³ contribute to this regional crisis of royal factionalism.

²⁰ See generally Quincy Wright, *When Does War Exist?* 26 AM. J. INT'L L. 362 (1932) (discussing the declaration of war doctrine with multiple references to the legal significance of a blockade).

²¹ See generally Albert H. Washburn, *The Legality of the Pacific Blockade I*, 21 COLUM. L. REV. 55 (1921).

²² See Randeep Ramesh, *The Long-Running Family Rivalries Behind the Qatar Crisis*, GUARDIAN (July 21, 2017), <https://www.theguardian.com/world/2017/jul/21/qatar-crisis-may-be-rooted-in-old-family-rivalries> (noting that political issues in the region often involve family issues). See also *Saudi Arabia Cuts Off Qatar*, ECONOMIST (June 10, 2017), <https://www.economist.com/middle-east-and-africa/2017/06/10/saudi-arabia-cuts-off-qatar> (discussing troubled dynastic relations among the Al Thanis, Al Khalifas, Al Sabahs and Al Sauds).

²³ Saudi Arabia and Qatar adhere to the legal thought of the ninth-century Islamic legal scholar, Ahmad ibn Hanbal; the Hanbali school is the most orthodox of the Sunni law formulations, which developed into the Wahhabism movement, named after the eighteenth-century theologian Muhammad ibn Abd al-Wahhab (1703–1792). See *Hanbali School of Law*, OXFORD DICTIONARY ISLAM, <http://www.oxfordislamicstudies.com/article/opr/t125/e799> (last visited Dec. 2, 2018). Despite similarities emanating from the same Wahhabi and Hanbali teachings, Qatar and Saudi Arabia state-religious relations differ in important respects, for instance the lack of a religious police institution in Qatar to enforce public morality. See Birol Baskan & Steven Wright, *Seeds of Change: Comparing State-Religion Relations in Qatar and Saudi Arabia*, 33 ARAB STUD. Q. 96, 97 (2011). Qatari Wahhabism is sometimes said to have formed given Qatar's outward looking maritime trade history—a Wahhabism of the sea—as opposed to Saudi Arabia's more stringent Wahhabism of the land. See James M. Dorsey, *Wahhabism vs. Wahhabism: Qatar challenges Saudi Arabia* 2 (RSIS Working Paper No. 262, 2013), <https://www.rsis.edu.sg/wp-content/uploads/rsis-pubs/WP262.pdf> [hereinafter “*Wahhabism v. Wahhabism*”]. On Wahhabism's history, place in the modern state, relation to Islamic revivalism, and challenges to its peninsular hegemony, see generally DAVID COMMINS, *THE WAHHABI MISSION AND SAUDI ARABIA* (2006).

The dispute intermixes fundamentally autocratic, rentier²⁴ regime structures with questions of political Islam and commercial enterprise. It contrasts Qatar's maverick international status and increasingly autonomous and assertive foreign policy since the Arab Spring,²⁵ with conservative Gulf Sheikdoms and Oman's Sultanate. It poses contextual challenges external to the ICJ's formal dispute settlement mechanisms, while raising questions and hopes of political liberalization against a regional backdrop impacted by globalization,

²⁴ Rentierism "refers to the (relative) dependence of states on rents for their internal functioning. Rents are understood to be forms of income generated from the export of natural resources, usually oil and gas." ROLF SCHWARZ, WAR AND STATE BUILDING IN THE MIDDLE EAST 121 n.5 (2012). Extensive research suggests that rentierist economies impede the formation of strong, legitimate states and give "life-support" to institutionally weak and politically accountable states. *Id.* at 2. For citations to confirming literature, *see id.* at 4–5. *See also* ALLEN J. FROMHERZ, QATAR: A MODERN HISTORY 111–124 (2017) (on peculiarities associated with Qatar as a "classic rentier state").

²⁵ *See generally* Mohammed Nuruzzaman, *Qatar and the Arab Spring: Down the Foreign Policy Slope*, 8 CONTEMP. ARAB AFF. 226 (2015) (on Qatar's "high profile" foreign policy); MATTHEW GRAY, QATAR: POLITICS AND THE CHALLENGES OF DEVELOPMENT 207 (2013) (noting Qatar's "highly activist" international role during the Arab Spring); KRISTIAN COATES ULRICHSEN, QATAR AND THE ARAB SPRING 4 (2014) (noting Qatar's shift in foreign policy in 2011 in favor of the Arab Spring movement). The Arab Spring refers to the spread of mass opposition movements across North Africa, the Levant and Persian Gulf States. It resulted in the "rapid demise of Presidents Ben Ali and Mubarak in Tunisia and Egypt, the eventual ousting of Colonel Gaddafi and Ali Abdullah Saleh from power in Libya and Yemen," and intensified opposition to regimes in Bahrain and Syria, with "mounting tensions" in the Eastern Province of Saudi Arabia," tensions in Oman, and political protests in Kuwait. Interestingly, it sparked a "phenomenal increase in Twitter usage in all GCC States, with Saudi Arabia registering the world's fastest rate of growth in Twitter users throughout 2012." *Id.* at 5. Qatar has been described as a hybrid diplomatic actor among Gulf States. It has worked with the US and Hamas, and with Hezbollah and Iran. It has mediated behind the scenes with Israel and Lebanon, supported Arab Spring revolutions in Tunisia, Egypt and Libya, and remained circumspect during the uprising in Bahrain. *See generally* Andrew F. Cooper & Bessma Momani, *Qatar and Expanded Contours of Small State Diplomacy*, 46 INT'L SPECTATOR 113 (2011). Qatar's support for the Al Jazeera media complex, which is based in Doha, has drawn huge audiences throughout the Arab world "for its hard-hitting reporting and provocative programming," including reports critical of most Arab governments. J.E. Peterson, *Qatar and the World: Branding for a Micro-State*, 60 MIDDLE EAST J. 732 and accompanying n.1 (2006).

ineffective civic institutions, tribal patronage, agnatic seniority, patrimony, and tremendous wealth and inequality.²⁶

Yemen, the Eastern government of Libya, Maldives, Mauritania, and Comoros, in “brotherly” support of Saudi Arabia, cut diplomatic ties with Qatar. Further, four other countries downgraded relations with Qatar.²⁷ A thirteen point list of Saudi demands accompanied what was described as the “Gulf’s worst diplomatic dispute in decades,”²⁸ spawning a propaganda war in Washington, D.C. and at the United Nations (“UN”).²⁹ Mediation efforts facilitated by

²⁶ See MARC C. THOMPSON & NEIL QUILLIAM, POLICY MAKING IN THE GCC: STATE, CITIZENS AND INSTITUTIONS 2 (Mark C. Thompson & Neil Quilliam eds., 2017) (assessing the absence of responsive governance in GCC countries); Ramesh, *supra* note 22 (noting the intermix of kinship ties and family relationships as problems for political dispute settlement). See also Mehran Kamrava, *Royal Factionalism and Political Liberalization in Qatar*, 63 MIDDLE EAST J. 401 (2009) (discounting meaningful political liberalization in Qatar); and FROMHERZ, *supra* note 24, at 161 (noting that Qatari citizens can only vote if their family has been living on the Peninsula since before 1930).

²⁷ Jordan, Djibouti, Chad, and Niger. See *Qatar-Gulf Crisis: Your Questions Answered*, AL JAZEERA (Dec. 5, 2017), <https://www.aljazeera.com/indepth/features/2017/06/qatar-gulf-crisis-questions-answered-170606103033599.html#blockading-countries>.

²⁸ Patrick Wintour, *Qatar Given 10 Days to Meet 13 Sweeping Demands by Saudi Arabia*, GUARDIAN (June 23, 2017), <https://www.theguardian.com/world/2017/jun/23/close-al-jazeera-saudi-arabia-issues-qatar-with-13-demands-to-end-blockade> (listing the demands as: curbing diplomatic ties with Iran, severing ties to terrorist organizations, shutting down Al-Jazeera, shutting down other news outlets such as Arabi21 and Rassd, terminating Turkey’s military presence in Qatar, stopping funding means for terrorist individuals and groups, handing over “terrorist figures”, ending interference in other countries’ internal affairs, stopping contact with political opposition forces in Saudi Arabia, the UAE, Egypt, and Bahrain, compensating blockading powers for associated financial losses, consenting to monthly external compliance checks, aligning militarily, politically, socially, and economically with other Gulf and Arab countries, agreeing to all demands within 10 days).

²⁹ Bethany Allen-Ebrahimian, *Qatar Pulls the Human Rights Card in Washington PR Blitz*, FOREIGN POL’Y (July 11, 2017), <https://foreignpolicy.com/2017/07/11/qatar-pulls-the-human-rights-card-in-washington-pr-blitz-saudi-arabia-gulf-blockade/> (noting Qatar’s emphasis on the blockade’s human rights costs); *Gulf Crisis: Qatar FM Meets UN Security Council Members*, AL JAZEERA (July 1, 2017), <https://www.aljazeera.com/news/2017/07/gulf-crisis-qatar-fm-meets-security->

Kuwait and backed by the United States (“U.S.”), the UN, and European powers, reduced the demands to six principles around which resolution of the crisis now revolves.³⁰ Even reduced to six principles, the demands to end the blockade reflect the imprecisions of a *pactum de contrabendo*.³¹ Such clauses permit hostile bargaining partners breathing space to sidestep temporarily nettlesome details or wrongful acts that could impede negotiations, however they can fruitlessly contribute to impasse by avoiding or postponing discussion of details at the heart of the dispute.³²

A report issued by the human rights organization, Amnesty International, labeled the one week deadline issued against Qataris by

council-members-170701042724973.html (on Qatar’s UN mission’s efforts to sway non-permanent members of the Security Council). *See also* Hassan Hassan, *Qatar Won the Saudi Blockade*, FOREIGN POLY (June 4, 2018), <https://foreignpolicy.com/2018/06/04/qatar-won-the-saudi-blockade/> (estimating that Qatar and Saudi Arabia spent about \$1.5 billion each on public relations campaigns and that Qatar seems to be winning in the court of public opinion).

³⁰ In a joint statement issued on July 5, 2017, Saudi Arabia, the UAE, Egypt, and Bahrain listed the six principles as: 1) Commitment to combat extremism and terrorism in all forms and to prevent their financing or the provision of safe haven; 2) prohibiting acts of incitement; 3) full commitment to Riyadh Agreement 2013 and Gulf Cooperation Council Supplementary Agreement; 4) commitment to outcomes of the Arab-Islamic-US summit in Riyadh in May 2017; 5) refraining from interfering with internal affairs of States; and 6) supporting the responsibility of all states to confront all forms of extremism and terrorism. *See Joint Statement by the Foreign Ministers of Saudi Arabia, Egypt, the United Arab Emirates and Bahrain*, EMBASSY KINGDOM SAUDI ARABIA (July 5, 2017), <https://www.saudiembassy.net/statements/joint-statement-foreign-ministers-saudi-arabia-egypt-united-arab-emirates-and-bahrain>. After nine months of negotiation, Qatar made several concessions; it pledged not to naturalize GCC citizens and it asked several members of the Muslim Brotherhood who had fled Egypt to Qatar to leave or not to return. *See* DAVID B. ROBERTS, QATAR: SECURING THE GLOBAL AMBITIONS OF A CITY-STATE 152 (2017).

³¹ An agreement to conclude a future agreement. *See* Ulrich Beyerlin, *Pactum de Contrabendo, Pactum de Negotiando*, in 3 ENCYCLOPEDIA PUBLIC INTERNATIONAL LAW 854 (Rudolf Berhardt ed., 1984).

³² *See* Stephen L. Kass, *Obligatory Negotiations in International Organizations*, 3 CAN. Y.B. INT’L L. 36, 39 (1965) (breathing space); Antonio Cassese, *The Israel-PLO Agreement and Self-Determination*, 4 EUR. J. INT’L L. 564, 566 n.6 (1993) (quoting Beyerlin’s view on potential employment to avoid obligation).

the UAE and the other states across the Gulf as “arbitrary” and contemptuous of human dignity.³³ Additionally, the report noted the banishment extended to mixed-nationality families, placing them at the “heart of a political crisis.”³⁴ The head of Qatar’s National Human Rights committee estimated that the humanitarian costs of the blockade would directly affect 19,000 Qataris living in the four blockading countries and possibly 11,300 individuals from the blockading countries living in Qatar.³⁵

The targeting of Qataris, collectively referred to as “Discriminatory Measures,”³⁶ drew the attention of six special rapporteurs,³⁷ who made an urgent appeal to the UAE of the adverse situation.³⁸ The UAE objected to and dismissed the concerns without

³³ *Gulf/Qatar Dispute: Human Dignity Trampled and Families Facing Uncertainty as Sinister Deadline Passes*, AMNESTY INT’L (June 19, 2017), <https://www.amnesty.org/en/latest/news/2017/06/gulf-qatar-dispute-human-dignity-trampled-and-families-facing-uncertainty-as-sinister-deadline-passes/>.

³⁴ *Id.* A Qatari National Human Rights Committee report approximated that 8,254 Saudis, 2,349 Bahrainis, and 784 Emiratis lived in Qatar prior to the crisis and that 1,927 Qataris lived in these three neighboring countries. *See Qatar: Isolation Causing Rights Abuses*, HUM. RTS. WATCH (July 12, 2017), <https://www.hrw.org/news/2017/07/13/qatar-isolation-causing-rights-abuses>.

³⁵ Krishnadev Calamur, *Tillerson Calls Qatar’s Position in Dispute with Arab States ‘Very Reasonable’*, ATLANTIC (July 11, 2017), <https://www.theatlantic.com/news/archive/2017/07/qatar-tillerson/533259/>.

³⁶ *See* Qatar v. UAE Application, *supra* note 1, ¶ 5. The UAE later modified the deportation decree to exempt Qataris married to Emirati nationals. *See UAE Exempts Qataris Married To Emiratis From Expulsion Order: Paper*, REUTERS (June 12, 2017), <https://www.reuters.com/article/us-gulf-qatar-emirates-idUSKBN1930V8>.

³⁷ Communication to Government of the United Arab Emirates, Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the promotion and protection of human rights while countering terrorism; and the Special Rapporteur on the right to education, 18 August 2017. *See* Qatar v. UAE Application, *supra* note 1, ¶ 14.

³⁸ Joint Communication from Special Procedures Mandate Holders of the Human Rights Council to the United Arab Emirates, AU ARE 5/2017 (Aug. 18, 2017), at 1, 4 [hereinafter Joint Communication of Special Procedures Mandate Holders] (connecting concerns about the right to movement and residence, family

addressing them.³⁹ A Human Rights Watch report detailed the human toll in terms of stranded workers, family separations, and interrupted medical care and education.⁴⁰ Zeid Ra'ad Al Hussein, the UN High Commissioner for Human Rights, expressed “alarm” about the human rights impact caused by the “overly broad” measures.⁴¹ In addition, the Office of the United Nations High Commissioner for Human Rights (“OHCHR”) affirmed the actions as arbitrary and noted in December 2017 that most measures made “no distinction between the Government of Qatar and its population,” thus they amounted to unilateral coercions that had a “potentially durable effect on” the human rights of those affected.⁴²

Leading human rights authorities, John Dugard and William Schabas, concluded the coalition’s actions illegally comprised unilateral

unity, education, work, freedom of expression, health and the right to property in relation to CERD).

³⁹ See *Qatar v. UAE Application*, *supra* note 1, ¶ 14 (noting that the UAE registered high displeasure at receiving the Sept. 18, 2017 communication—phrased as an urgent appeal—and declined to address the asserted violations).

⁴⁰ *Qatar: Isolation Causing Rights Abuses*, HUM. RTS. WATCH (July 12, 2017), <https://www.hrw.org/news/2017/07/13/qatar-isolation-causing-rights-abuses>.

⁴¹ *Qatar Diplomatic Crisis: Comment by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein on Impact on Human Rights*, OFF. U.N. HIGH COMMISSIONER HUM. RTS. (June 14, 2017), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21739&LangID=E>.

⁴² OHCHR Technical Mission to the State of Qatar, 17–24 November 2017, *Rep. on the Impact of the Gulf Crisis on Human Rights*, ¶¶ 60 (“durable effect”), 61 (“unilateral”), and 64 (“no distinction”), (2017) <http://nhrc-qa.org/en/themencode-pdf-viewer/?file=http://nhrc-qa.org/wp-content/uploads/2018/01/OHCHR-TM-REPORT-ENGLISH-1.pdf> [hereinafter OHCHR Report]. See also *Qatar Diplomatic Crisis: Comment by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein on Impact on Human Rights*, OFF. U.N. HIGH COMMISSIONER HUM. RTS. (June 14, 2017), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21739&LangID=E> (expressing “alarm about the possible impact on many people’s human rights” given the decision by Saudi Arabia, the UAE, Egypt and Bahrain to ties with Qatar.); Statement of Dr. Ali Smaikh Al Marri, Chairman, National Human Rights Committee (Qatar), 10:16 mark [undated], <http://nhrc-qa.org/> (affirming that “the continuation of this crisis will damage the social fabric of the Gulf family.”).

coercive measures (sanctions).⁴³ Under their analysis, the UAE actions violated the Declaration on Friendly Relations,⁴⁴ the Draft Articles on Responsibility of States for Internationally Wrongful Acts,⁴⁵ the UN Charter, and to the extent coalition partners have acceded to them, the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights.⁴⁶ Details may be hard to pin down. Professors Dugard and Schabas concluded that “Qatar has committed no internationally wrongful act.”⁴⁷ Unsuccessful interventions at the Human Rights Council,⁴⁸ and by Kuwait as mediator,⁴⁹ propelled the case to The Hague, a forum generally and historically eschewed by Arab countries.⁵⁰

The anti-Qatar bloc seeks to pressure Qatar into ending support for various Islamist groups, including Ahrar al-Sham in northern Syria, the Muslim Brotherhood in Egypt, religious insurrectionists in Libya, anti-Saudi and Shia communities in Saudi Arabia’s fractious eastern Qatif province,⁵¹ and Saudi-opposed Houthi rebels in Yemen. Regarding the latter claim, a 2014 war pitting Saudi

⁴³ See Professor John Dugard & Professor William Schabas, *The Blockade of Qatar One Year On: Violations of Human Rights and Coercive Measures 1-7* (June 5, 2018), <http://tgchambers.com/wp-content/uploads/2018/06/Qatar-report.pdf>. See also OHCHR Report, *supra* note 42, ¶ 61 (characterizing the UAE measures as conforming to the definition of unilateral coercive measures).

⁴⁴ G.A. Res. 2625 (XXV), Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, at Annex, PP 9 (Oct. 24, 1970).

⁴⁵ See Int’l Law Comm’n, Rep. on the Work of its Fifty-Third Session, U.N. Doc. A/56/10, at 128–139 (2001).

⁴⁶ See Dugard & Schabas, *supra* note 43, at 5.

⁴⁷ Dugard & Schabas, *supra* note 43, at 4.

⁴⁸ See, e.g., *Qatar Ministry of Foreign Affairs, Qatar Calls on Human Rights Council to Immediately End Siege Countries’ Violations*, MINISTRY FOREIGN AFF. (Feb. 28, 2018), <https://www.mofa.gov.qa/en/all-mofa-news/details/2018/02/28/qatar-calls-on-human-rights-council-to-immediately-end-siege-countries'-violations> (presenting Qatar’s appeal to the Human Rights Council).

⁴⁹ Qatar v. UAE Application, *supra* note 1, ¶ 17.

⁵⁰ See Cesare P.R. Romano, *International Judicialization in the Arab World: An Initial Assessment* 33–34 (iCourts Working Paper Series, No. 49, 2016) (noting the relatively few cases since 1946 where Arab states have been involved as applicant or respondent before the ICJ).

⁵¹ Wintour, *supra* note 9.

interests and ground forces (supporting the internationally recognized Hadi regime, which controls the major Indian Ocean port of Aden) against the Iranian-backed Houthi Zaydi Shiites (who control Yemen's capital city, Sana'a) has turned into the "world's largest humanitarian catastrophe" and a deepening security problem for Saudi Arabia.⁵² Qatar, although Sunni-dominated, shares close economic ties and offshore energy interests with Iran and its Shia population.⁵³ An alleged computer hack of a speech by the Qatari emir in support of Iran sparked this crisis.⁵⁴ The Saudi-led alliance in Yemen has since

⁵² Bruce Riedel, *In Yemen, Iran Outsmarts Saudi Arabia Again*, BROOKINGS INST. (Dec. 6, 2017), <https://www.brookings.edu/blog/markaz/2017/12/06/in-yemen-iran-outsmarts-saudi-arabia-again/>. See also *Yemen, Humanitarian Response Plan January-December 2018*, UNOCHA (Jan. 2018), at 2, <https://reliefweb.int/report/yemen/yemen-humanitarian-response-plan-january-december-2018-enar> (last visited Dec. 2, 2018) (noting 22.2 million people in Yemen now need humanitarian or protection assistance, including 11.3 million who are in acute need). See also Helene Cooper, Thomas Gibbons-Neff, & Eric Schmitt, *Army Special Forces Secretly Help Saudis Combat Threat from Yemen Rebels*, N.Y. TIMES (May 3, 2018), <https://www.nytimes.com/2018/05/03/us/politics/green-berets-saudi-yemen-border-houthi.html> (discussing the secret movement of U.S. Army Special Forces to the Yemeni border in support of the Saudi military campaign and the launching of more than 100 missiles since 2015 into the Saudi kingdom by Houthi forces).

⁵³ See Tim Lister, *Unraveling the Qatar Crisis: Sunni, Shia, Saudi, Iranian—and Trump*, CNN (June 7, 2017), <https://www.cnn.com/2017/06/07/middleeast/qatar-crisis-analysis/index.html> (noting the huge gas field in the Persian Gulf shared by Qatar and Iran [known in Qatar as the North Field and in Iran as South Pars]); LAWRENCE G. POTTER, *The Rise and Fall of Port Cities in the Persian Gulf*, in *THE PERSIAN GULF IN MODERN TIMES: PEOPLE, PORTS, AND HISTORY* 131, 145 (Lawrence G. Potter ed., 2014) (noting the necessity of Iranian-Qatari cooperation to develop their shared undersea gas field).

⁵⁴ Qatar v. UAE Application, *supra* note 1, ¶ 21 (noting the "spark that lit the fuse"). See also Patrick Wintour, *Russian Hackers to Blame for Sparking Qatar Crisis, FBI Inquiry Finds*, GUARDIAN (June 7, 2017), <https://www.theguardian.com/world/2017/jun/07/russian-hackers-qatar-crisis-fbi-inquiry-saudi-arabia-uae> (questioning who would have commissioned the freelance hackers); Greg Myre, *Report: United Arab Emirates Hacked Qatar, Sparking Gulf Crisis*, NPR (June 17, 2017) (quoting unnamed U.S. intelligence officials from a *Washington Post* report). The quotations, which appeared on a crawl across T.V. screens on May 23, 2017 and attributed to the emir of Qatar, Tamim bin Hamad Al Thani, read: "Iran is an Islamic power in the region that cannot be ignored;" and " Hamas is the legitimate representative of the Palestinian people." Dexter Filkins, *Quest to Remake the Middle East*, NEW YORKER (Apr. 9, 2018),

removed Qatar from its coalition,⁵⁵ and Qatar has restored full diplomatic ties with Iran.⁵⁶ This removal from the alliance adds to fissures exposed during a Saudi-Qatar dispute for influence in Syria, which impeded opposition efforts to topple Bashar al-Assad's regime.⁵⁷ Saudi Arabia, the UAE, and Bahrain broke diplomatic relations with Qatar in 2014,⁵⁸ based on violations of a non-public security understanding crafted at a Gulf Cooperation Council (GCC) Riyadh meeting in November 2013.⁵⁹

Omani and Kuwaiti intermediaries provided a pathway for reconciliation within the GCC that led to the Riyadh Supplemental Agreement in November 2014, which affirmed norms of non-interference.⁶⁰ Saudi sources now allege Qatar never fulfilled those mostly concealed-from-public commitments,⁶¹ pointedly blaming Al

<https://www.newyorker.com/magazine/2018/04/09/a-saudi-princes-quest-to-remake-the-middle-east>.

⁵⁵ *Qatar Reneged on Its Promises, Documents Reveal*, SAUDI GAZETTE (June 11, 2017), <http://saudigazette.com.sa/article/512571/SAUDI-ARABIA/Qatar>.

⁵⁶ *See UAE Responds as Qatar Restores Full Diplomatic Ties With Iran*, NATIONAL (Aug. 24, 2017), <https://www.thenational.ae/world/gcc/uae-responds-as-qatar-restores-full-diplomatic-ties-with-iran-1.622417> (eliciting the claim from the UAE Foreign Minister that Qatar has “escalated its troubles”).

⁵⁷ *See Saudi-Qatar Crisis Puts Syrian Rebels in Tricky Position*, INQUIRER.NET (June 17, 2017), <http://newsinfo.inquirer.net/906325/saudi-qatar-crisis-puts-syrian-rebels-in-tricky-position>. Al-Assad's regime is likely to prevail over this revolt stemming from the 2010 Arab Spring, notwithstanding billions of dollars of western and Gulf state assistance for the opposition, and one of the costliest covert action programs in the history of the CIA. *See* Aron Lund, *How Assad's Enemies Gave Up on the Syrian Opposition*, CENTURY FOUND. (Oct. 17, 2017), <https://tcf.org/content/report/assads-enemies-gave-syrian-opposition/>.

⁵⁸ *See* ROBERTS, *supra* note 30, at 151 (noting the recall of ambassadors from Saudi Arabia, the UAE, and Bahrain).

⁵⁹ *See* Islam Khalid Hassan, *GCC's 2014 Crisis: Causes, Issues and Solutions*, AL JAZEERA CTR. STUD. (Mar. 31, 2015), <http://studies.aljazeera.net/en/dossiers/2015/03/201533172623652531.html>.

⁶⁰ Amira Howeidly, *Saudia Arabia, UAE Make Amends With Qatar*, AL-AHRAMWEEKLY (Nov. 20–26, 2014), <http://weekly.ahram.org.eg/News/7789.aspx> (noting parties variously refer to the Riyadh Consultative Summit document as “document,” “agreement,” or “supplementary agreement,” and that its contents have not been disclosed fully).

⁶¹ *See, e.g., Qatar Reneged on Its Promises, Documents Reveal*, SAUDI GAZETTE (July 11, 2017), <http://saudigazette.com.sa/article/512571/SAUDI-ARABIA/Qatar>

Jazeera media platforms and professionals for their advancement of an anti-GCC agenda.⁶² The anti-Qatar coalition, fortified by the solidification of Egyptian General Abdel Fattah el-Sisi's 2013 *coup d'état* against Mohamed Morsi and the Muslim Brotherhood (which ended Egypt's restive thirty-month failed transition to democracy following President Hosni Mubarak's forced resignation), provide stout opposition to a negotiated end to Qatar's isolation.⁶³ This stalemate may contribute to sub-regional competitions stretching from the Gaza Strip to the Horn of Africa⁶⁴ and represents the ongoing repercussions of the tumultuous 2011 Arab Spring.⁶⁵

In May 2018, Bahrain's Foreign Minister concluded that no "glimmer of hope for a solution" appears on the horizon.⁶⁶ Employing an alliterative taxonomy of dysfunctionality, Richard Falk described the crisis as a multidimensional descent into "chaos, conflict, and coercion" for the region.⁶⁷ Falk noted "dubious major assumptions" of the anti-Qatar bloc, including the coalition's identification of the Muslim Brotherhood as a terrorist organization and the coalition's "own extensive funding of radical madrassas throughout the Muslim

(referring to the Riyadh Agreement of 2013 and the Supplementary Agreement of 2014).

⁶² Ben Flanagan, *Al Jazeera Bias Under Spotlight Amid GCC Rift*, ARABNEWS (June 13, 2017), <http://www.arabnews.com/node/1114206/science-technology>.

⁶³ See ULRICHSEN, *supra* note 25, at 173–74 (noting the "rollback of the Arab uprisings in North Africa," including Egypt's return to "a military-led status quo ante," presented Qatar with immediate foreign policy challenges).

⁶⁴ See Robert Malley, *What Happens in the Gulf Doesn't Stay in the Gulf*, ATLANTIC (June 7, 2018), <https://www.theatlantic.com/international/archive/2018/06/somalia-gulf-crisis-vegas-rules/562292/>; Matthias Sailer & Stephan Roll, *Three Scenarios for the Qatar Crisis: Regime Change, Resolution or Cold War in the Gulf*, SWP COMMENT 3 (July 2017), <https://www.swp-berlin.org/en/publication/the-qatar-crisis-three-scenarios/>.

⁶⁵ See generally Silvia Colombo, *The GCC and the Arab Spring: A Tale of Double Standards*, 47 ITALIAN J. INT'L AFF. 110 (2012) (on the difficulties managing cohesive policy within the GCC since the Arab uprisings in 2011).

⁶⁶ *No End in Sight to Qatar Row: Bahrain*, KHALEEG TIMES (May 27, 2018), <https://www.khaleejtimes.com/region/qatar-crisis/no-end-in-sight-to-qatar-row-bahrain> (quoting Sheikh Khalid bin Ahmed Al Khalifa).

⁶⁷ Richard Falk, *The Gulf Crisis Reassessed from An International Law Perspective*, GLOBAL RES. (Mar. 14, 2018), <https://www.globalresearch.ca/the-gulf-crisis-reassessed-from-an-international-law-perspective/5632113>.

world.”⁶⁸ Falk suggested that invoking terrorist concerns as a basis for expelling Qataris serves as a pretext for indirectly confronting Iran by directly disciplining Qatari nationals for their dynastic monarchy’s deficient foreign policy alignment with the House of Al Saud.⁶⁹ Other commentators regard the dispute as an attack against Qatar’s sovereignty with the Saudi intent of turning Qatar into a vassal state.⁷⁰ Still others warn of Qatar’s dangerous practice of playing much larger opposing forces against each other and moderating difficulties that arise through recourse to its only unquestioned comparative advantage—checkbox diplomacy.⁷¹ The crisis also stirs speculation about the regime change intentions of the Saudi and Emirati royal families against the Al Thanis in Doha.⁷² Bad blood dates from leaked recordings in 2014 involving the former emir of Qatar and his foreign minister, who contemplated the dissolution and division of Saudi Arabia based on internal signs of instability in the House of Saud.⁷³ Reports further indicate U.S. Secretary of State Rex Tillerson intervened in June 2017 “to stop a secret Saudi-led, UAE backed plan

⁶⁸ *Id.*

⁶⁹ *See id.*

⁷⁰ *See* Richard Sokolsy & Aaron Miller, *Qatar Crisis: Can Rex Tillerson Fix This Mess?* CARNEGIE ENDOWMENT INT’L PEACE (July 10, 2017), <https://carnegieendowment.org/2017/07/10/qatar-crisis-can-rex-tillerson-fix-this-mess-pub-71483> (casting doubt on diplomacy as a solution for Saudi intentions of turning Qatar into a semi-vassal state); and Hassan, *supra* note 29 (discussing the goal of turning Qatar into a vassal state).

⁷¹ *See* Qatar: A Dangerous Alliance, *Qatar: A Dangerous Alliance-Full Documentary*, YOUTUBE (Sept. 22, 2017), <https://www.youtube.com/watch?v=kHXXan2CRZQ> (interviewing Hussain Haqqari, Alex Vatanka and Jonathan Schanzer).

⁷² Sailer & Roll, *supra* note 64, at 2 (concluding that a coming Cold War in the Gulf is the most likely scenario but “not completely excluding” regime change intentions against the Qatari leadership).

⁷³ *Former Qatari Emir Conspired with Qaddafi Against Saudi Arabia*, AL ARABIYA ENGLISH (June 8, 2017), <http://english.alarabiya.net/en/features/2017/06/08/Former-Qatari-Emir-conspired-with-Gaddafi-against-Saudi-Arabia.html> (discussing leaked audio recordings leaked in 2014 but dating possible to 2003 allegedly of Qatar emir Hamad bin Khalifa and foreign minister Hamad bin Jassim with former Libyan Leader Muammar Qaddafi).

to invade and . . . conquer Qatar.”⁷⁴ Such a take-over would immediately staunch rapidly depleting Saudi financial reserves, which have dwindled by one-third since 2015 due to downward pressure on world oil prices.⁷⁵

More than affecting Qatar’s sovereign independence, the embargo has added another intractable conflict to the Middle East landscape. The embargo has dealt a substantial blow to the region’s premier international cooperation organization, the GCC,⁷⁶ which is too deeply divided to facilitate policy coordination. It has also paralyzed the Arab League, which kept the issue off its recent Cairo agenda and refused to issue visas to Qatar’s delegation.⁷⁷ It has

⁷⁴ Alex Emmons, *Saudi Arabia Planned to Invade Qatar Last Summer. Rex Tillerson’s Efforts to Stop it May have Cost him his Job*, INTERCEPT (Aug. 1, 2018), <https://theintercept.com/2018/08/01/rex-tillerson-qatar-saudi-uae/>.

⁷⁵ See Bruce Riedel, *Kings and Presidents: Whither the Special Relationship with Saudi Arabia?* BROOKINGS INST. (Nov. 21, 2017), at 5–6, https://www.brookings.edu/wp-content/uploads/2017/11/fp_20171121_saudi_us_transcript.pdf. Reidel noted the Saudi cradle-to-grave social security system is financially unsustainable when oil prices dip below 80–85 dollars per barrel, *id.* at 5, in addition to costs associated with its disastrously expensive war in Yemen (estimated at \$700 million per month), *id.* at 7.

⁷⁶ Geoffrey Martin, *Is the GCC Dead After the Qatar Crisis?* GULF ST. ANALYTICS (Feb. 5, 2018), <https://gulfstateanalytics.com/gcc-dead-qatar-crisis/> (answering yes but questioning whether the GCC was ever alive); Abdullah Al Shayji, *Qatar Crisis Casts a Shadow on GCC Unity*, GULF NEWS (June 28, 2017), <https://gulfnews.com/opinion/thinkers/qatar-crisis-casts-a-shadow-on-gcc-unity-1.2050430> (noting the “snowballing crisis . . . could undermine the [GCC] bloc”). The GCC formed in 1981 as the political and economic alliance of six Gulf States, Saudi Arabia, Kuwait, the UAE, Qatar, Bahrain, and Oman. See Hasan-Askari Rizvi, *Gulf Cooperation Council*, 35 PAKISTAN HORIZON 29 (1982). A May 2018 GCC summit hosted by the United States has been postponed until September with the hope that intermediaries will by then be able to get the disputants back to the GCC. See Warren Strobel & Jonathan Landay, *White House Postpones Planned Trump Summit with Gulf Leaders: Sources*, REUTERS (Apr. 3, 2018), <https://www.reuters.com/article/us-usa-gulf-summit/white-house-postpones-planned-trump-summit-with-gulf-leaders-sources-idUSKCN1HA2H2>. For information on the GCC and its Charter, see generally SECRETARIAT GEN. GULF COOPERATION COUNCIL, <http://www.gcc-sg.org/en-us/Pages/default.aspx> (last visited Dec. 2, 2018).

⁷⁷ *Egypt ‘Blocks Qatari Officials’ from Attending Arab League Meeting Amid Gulf Crisis*, THE NEW ARAB (May 10, 2018), <https://www.alaraby.co.uk/english/news/2018/5/9/egypt-blocks-qatari-officials-from-attending-arab-league-meetings>.

spawned a breakaway Saudi-Emirati Coordination Council, which has already projected a sixty month *Ala'azm* (Determination) Strategy to integrate the two countries in ways that compromise directly the future of the GCC.⁷⁸ It has splintered the Organization of Islamic Cooperation (OIC), which formed as a representation of the universal Muslim sense of unity (*Ummah*),⁷⁹ but now absorbs criticism as a financially dependent agency of Saudi hegemony.⁸⁰ Qatar has criticized the OIC for siding with the anti-Qatar bloc,⁸¹ drawing key support

⁷⁸ See *KSA and UAE Announce Joint Vision for Economic, Developmental and Military Integration Through 44 Strategic Projects*, SAUDI PRESS AGENCY (June 7, 2018), <https://www.spa.gov.sa/viewfullstory.php?lang=en&newsid=1774108> (announcing the Saudi-Emirati Coordination Council's *Ala'azm* Strategy). See also Simon Henderson, *New Arab Gulf Council Reflects Shift in Strategy, Leadership*, HILL (June 10, 2018), <http://thehill.com/opinion/international/391431-new-arab-gulf-council-reflects-shift-in-strategy-leadership> (suggesting the death of the GCC in the wake of the formation of the Saudi-Emirati Coordination Council).

⁷⁹ See *History*, ORGANIZATION OF ISLAMIC COOPERATION, https://www.oic-oci.org/page/?p_id=52&p_ref=26&lan=en (noting the organization formed in Rabat in 1969 to “galvanize the [u]mmah into a unified body”) (last visited Sept. 23, 2018). See also OLIVER ROY, *GLOBALIZED ISLAM: THE SEARCH FOR A NEW UMMAH* 1 (2006) (defining *Ummah*); Ejaz Akram, *Muslim Ummah and its Link with Transnational Muslim Politics*, 46 ISLAMIC STUD. 381 (2007) (contrasting the meaning of *Ummah* with western nation-state notions of peace and security).

⁸⁰ See Shahram Akbarzadeh & Zahid Shahab Ahmed, *Impacts of Saudi Hegemony on the Organization of Islamic Cooperation (OIC)*, __INT'L J. POLIT. CULT. SOC'Y __ (forthcoming; copy on file with author). With 57 members representing 1.6 billion Muslims, the OIC is the world's second largest international organization after the UN. *Id.*

⁸¹ See *Qatar Condemns Statement by OIC General Secretariat*, PENINSULA (June 7, 2017), <https://www.thepeninsulaqatar.com/article/07/06/2017/Qatar-condemns-statement-by-OIC-General-Secretariat>.

from Turkey, which chairs the OIC⁸² and, along with the United States,⁸³ operates its own military bases in Qatar.⁸⁴

The embargo is now a “slow-motion strategic failure,” having imprudently discounted Qatar’s small population yet immense wealth,⁸⁵ its commercial and strategic access to the sea, and the availability of import substitutes once provided by blockading powers.⁸⁶ The failure of the embargo exposes cross-purpose messages and diminished U.S. influence in the region, which formerly maintained appearances of common interests and regional cohesion on missile defense needs, counterbalances to Iran’s nuclear program,

⁸² See *Turkey: Isolation of Qatar Is Not Islamic*, AL JAZEERA (June 13, 2017), <https://www.aljazeera.com/news/2017/06/turkey-qatar-isolation-islamic-values-170613131822995.html> (noting Turkish President Erdogan’s denunciation of Qatar’s isolation).

⁸³ Qatar hosts more than 10,000 US and coalition military personnel at the Al Udeid Air Base, which serves as the forward headquarters for the U.S. Air Forces Central Command and its Combined Air Operations Center (CENTCOM). See *Qatar to Expand US Airbase as Defence Chief Visits DC*, AL JAZEERA (Jan. 29, 2018), <https://www.aljazeera.com/news/2018/01/qatar-expand-airbase-defence-chief-visits-dc-180129192013144.html>. See also *Al Udeid Air Base, Qatar*, GLOBALSECURITY.ORG, <https://www.globalsecurity.org/military/facility/udeid.htm> (noting the base is the U.S.’ largest in the Middle East) (last visited Sept. 23, 2018).

⁸⁴ See Shehab Al-Makahleh, *Is Turkey Preparing to Replace US Military Base in Qatar?* AL ARABIYA ENGLISH (Mar. 18, 2018), <http://english.alarabiya.net/en/views/news/middle-east/2018/03/18/Turkey-cements-economic-ties-with-military-base-in-Qatar.html> (on Turkey’s two military bases in Qatar and its 2022 military plan to deploy more troops and establish a naval base in Qatar); Suraj Sharma, *ANALYSIS: A Quandary for Qatar, and a Global Crisis in the Making*, MIDDLE EAST EYE (July 4, 2017), <http://www.middleeasteye.net/news/analysis-qatar-crisis-military-diplomacy-economy-689636344> (discussing the problematizing significance of Turkish soldiers in Qatar as a hedge against any attempt to topple the Qatari leadership).

⁸⁵ IMF ranks Qatar as the world’s richest country. See Will Martin, *Ranked: The 29 Richest Countries in The World*, BUS. INSIDER (May 22, 2018), <http://www.businessinsider.com/the-richest-countries-in-the-world-2018-5> (listing Qatar as the richest country based on April 2018 IMF data).

⁸⁶ Gabriel Collins, *Anti-Qatar Embargo Grinds Toward Strategic Failure*, Issue Brief, RICE U. BAKER INST. PUB. POL’Y 1–2 (Jan. 22, 2018), <https://scholarship.rice.edu/bitstream/handle/1911/99690/bi-brief-012218-ces-qatarempargo.pdf?sequence=1&isAllowed=y>.

and coordinated policy responses to interferences in Lebanon, Syria, Yemen, and Iraq.

While the political context appears frozen, the social, economic, and security implications remain fluid. Qatar's diplomatic dexterity and world-wide investments have circumvented the economic effects of isolation,⁸⁷ extended relations with Turkey, adroitly managed affairs with Iran, repaired then strengthened ties to the U.S., unbalanced Saudi Arabia's Gulf leadership, and leveraged the platform of the ICJ to publicize its victimization.⁸⁸ Before the blockade, Qatar cultivated its role as mediator and outmaneuvered Saudi Arabia and Turkey to create a diplomatic outpost for the Taliban, establishing Doha as a safe haven hub for high-level discussions and peace talks.⁸⁹ Qatar's projection of a triangulated foreign policy fundamentally balances Saudi Arabian, Iranian, and the United States interactions. Qatar has added complexity to its geostrategic station by discussing the purchase of a Russian missile defense system;⁹⁰ a move

⁸⁷ See *Qatar: 2018 Article IV Consultation-Press Release; Staff Report; and Statement by the Executive Director for Qatar*, IMF STAFF COUNTRY REP. (May 30, 2018), <http://www.imf.org/en/Publications/CR/Issues/2018/05/30/Qatar-2018-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-the-Executive-45915> (noting Qatar's economy continues to successfully adjust despite the diplomatic rift).

⁸⁸ On Qatar's portrayal "as a victim of Saudi perfidy" and the increasing view in the Arab world that the anti-Qatar quartet represents an autocratic conspiracy against political change, see Hassan, *supra* note 29.

⁸⁹ The establishment of a diplomatic channel of communication with the Taliban in Qatar has facilitated the interests of Pakistan and Afghanistan, NATO, and has assisted in discussions involving Guantanamo Bay prisoner exchanges and the release of U.S. Sgt. Robert "Bowe" Bergdahl from Taliban captivity. See *How Qatar Came to Host the Taliban*, BBC (June 23, 2013), <https://www.bbc.com/news/world-asia-23007401>. Bergdahl was released in May 2014 in exchange for five Guantanamo Bay captives released to Qatari intermediaries. See also Eric Schmitt & Charlie Savage, *Bowe Bergdahl, American Soldier, Freed by Taliban in Prisoner Trade*, N.Y. TIMES (May 31, 2014) <https://www.nytimes.com/2014/06/01/us/bowe-bergdahl-american-soldier-is-freed-by-taliban.html>.

⁹⁰ See *Qatar In Talks with Russia Over S-400 Missile Defense System Purchase*, MISSILE DEFENSE ADVOC. ALLIANCE (July 10, 2018), <http://missiledefenseadvocacy.org/other-news/qatar-in-talks-with-russia-over-s-400-missile-defense-system-purchase/> (noting missile purchase discussions between

that would run counter to the interoperable air defense aspirations of the GCC. Saudi Arabia has threatened a military response.⁹¹

Long-term implications of this blockade and expulsion extend beyond the dynamics of regional politics. A central component of the Gulf economy is its migrant work force.⁹² Migrant workers far outnumber the indigenous population in the region's smaller countries.⁹³ Migrant communities and governments such as India that supply manual and domestic workers to the Gulf States have crucial interests at stake.⁹⁴ The migrant worker economy is regarded among the world's most important global poverty-fighting institutions,⁹⁵ notwithstanding well-known abuses involving visa-trading and human

Qatar's emir, Sheikh Tamim bin Hamad Al Thani and Russian President, Vladimir Putin).

⁹¹ See Benjamin Barthe, *L'Arabie saoudite menace le Qatar d'une "action militaire" s'il se dote de missiles S-400*, LE MONDE (June 1, 2018), https://mobile.lemonde.fr/proche-orient/article/2018/06/01/l-arabie-saoudite-menace-le-qatar-de-represailles-militaires-s-il-se-dote-de-missiles-s-400_5308285_3218.html?xtref=.

⁹² See generally Andrzej Kapiszewski, *Arab Versus Asian Migrant Workers in the GCC Countries*, in SOUTH ASIAN MIGRATION TO GULF COUNTRIES: HISTORY, POLICIES, DEVELOPMENT 46–70 (Prakash C. Jain & Gina Zacharia Oommen eds., 2016) (noting the economic significance of remittances and the general support for such emigration by Gulf States).

⁹³ According to the ILO, migrant workers make up the majority of the population in Bahrain, Oman, Qatar and the UAE, and over 95 percent of the domestic and construction work forces of Gulf States. Migrant workers account for more than 80 percent of the population in Qatar and the UAE. See generally *Labour Migration*, INT'L LABOUR ORG., <http://www.ilo.org/beirut/areasofwork/labour-migration/lang-en/index.htm> (last visited Sept. 23, 2018).

⁹⁴ See generally Muhammad Azhar, *Indian Migrant Workers in GCC Countries*, 9 DIASPORA STUD. 100–11 (2016) (on the post-1973 oil era influx of millions of Indian migrants in GCC countries and the impact on the Indian economy). See also Jo Jakobsen & Marko Valenta, *Moving to the Gulf: An Empirical Analysis of the Patterns and Drivers of Migration to the GCC Countries, 1960–2013*, 57 LABOR HIST. 627, 630 (2016) (noting “[a]lmost half of the total emigrant stock from India, which is by far the largest migrant-sending country in South Asia, is received by the GCC” and that the GCC hosts over 21 million migrants from the top 25 migrant-sending countries).

⁹⁵ See Omar Al-Ubaydli, *The Economics of Migrant Workers in the GCC*, ARAB GULF ST. INST. WASH. 3 (2015), https://agsiw.org/wp-content/uploads/2015/12/Omar-Al-Ubaydli_Economic-Migrants_PDF2.pdf (citing research from the World Bank and the U.N. Global Commission on International Migration).

trafficking.⁹⁶ The International Labor Organization (“ILO”) has reported that the Arab States region contains among the world’s highest proportions of manual and domestic migrant communities,⁹⁷ putting pressure on labor supply states to choose sides in the dispute or disengage by reducing nationals’ exposure to increasing regional insecurities.⁹⁸ Since the initiation of the blockade, Qatar has moved to quiet concerns about its treatment of migrant workers and improve its much criticized *kafala* (sponsorship) system, which prevented migrant workers from fleeing abusive employer practices.⁹⁹ Criticisms of the *kafala* system are “Gulf wide,” and an array of potential reforms in Qatar may add significant pressure to ILO attempts to end exploitative labor systems in the region.¹⁰⁰

Of the legal and human rights violations alleged in this upcoming dispute at the ICJ, this Article focuses on general issues

⁹⁶ See *id.* at 12–15 (citing visa-trading (where migrants are sponsored for a specific position but forced to perform a different job on arrival) and other forms of human smuggling and migrant worker abuse). See also Ali Assareh Mahmood Monshipouri, *Migrant Workers and Their Rights in the United Arab Emirates*, in HUMAN RIGHTS IN THE MIDDLE EAST: FRAMEWORKS, GOALS, AND STRATEGIES 227–243 (Mahmood Monshipouri ed., 2011) (discussing regional and country-specific practices and labor conditions affecting migrant workers).

⁹⁷ See *Labour Migration*, *supra* note 93 (noting in 2015 that there were 32 million international migrants in the Arab States region).

⁹⁸ See Naser Al-Tamimi, *The Gulf Crisis: Why is India Still Neutral?* ARAB NEWS (July 29, 2017), <http://www.arabnews.com/node/1136101/columns> (noting that the GCC was India’s largest trading partner in 2016, with the UAE and Saudi Arabia among India’s top five partners, and that Qatar provided India with almost 19 percent of its crude energy imports and 62 percent of its natural gas imports); Zahraa Alkhalisi & Rishi Iyengar, *Philippines Stops Sending Workers to Qatar*, CNNMONEY (June 6, 2017), <http://money.cnn.com/2017/06/06/news/economy/qatar-migrant-workers-philippines/index.html> (assessing reactions of Qatari migrant worker supply states, including the Philippines, India, Nepal, and Egypt).

⁹⁹ See G.B.331/INS/13(Rev.), Governing Body, INT’L LABOR OFF. (Oct. 31, 2017), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_586479.pdf (on complaints concerning non-observance by Qatar of labor standards and general agreements to be taken to rectify the situation).

¹⁰⁰ See *Qatar: Implementation Will be Key for Labor Reforms*, HUM. RTS. WATCH (Oct. 27, 2017), <https://www.hrw.org/news/2017/10/27/qatar-implementation-will-be-key-labor-reforms> (discussing *kafala* reforms and the impact for the region). Bahrain terminated the *kafala* system in 2009.

surrounding the expulsion of aliens,¹⁰¹ with specific concentration on the implications for Gulf State relations regardless of a judgment from the ICJ. Qatar's Foreign Minister claimed the suit presented "the first step in bringing an end" to serious human rights abuses.¹⁰² Even if his sense of progress prevails through recourse to international law's most formal dispute settlement mechanism, the journey likely will be long and the prospect of a Pyrrhic victory is high. However, the Emirati Foreign Minister dismissed the petition as a deceit, adding that it only escalated tensions.¹⁰³

Following this introduction, Part II briefly reviews the general international law supporting migratory movements as associated with the principle of hospitality and then discusses the international law relating to expulsions. Part III assesses the benefits and obstacles of removing this case from the ICJ's docket to another, softer law environment. For purposes here, soft law means "the ability to get what you want through attraction rather than through coercion or payments."¹⁰⁴ Its usage redirects the understanding of influence away from the formalities and structures of international law, as embodied by the ICJ itself, toward a culture of decision-making that emphasizes norm socialization, networks and forms of commitment broadly

¹⁰¹ For purposes here, expulsion is defined in line with the definition proffered by Art. 2(a) of the International Law Commission's Draft Articles on the Expulsion of Aliens, with Commentaries, available at http://legal.un.org/ilc/texts/instruments/english/commentaries/9_12_2014.pdf [hereinafter 2014 Report] ("a formal act, or conduct consisting of an action or omission, attributable to a State by which an alien is compelled to leave the territory of that state . . .").

¹⁰² *Qatar Says It Files Case Against UAE at UN's Highest Court*, N.Y. TIMES (June 11, 2018), <https://www.nytimes.com/aponline/2018/06/11/world/middleeast/ap-ml-qatar.html> (quoting Qatar's Foreign Minister Sheikh Mohammed bin Abdulrahman Al Thani).

¹⁰³ *See Gargash: We're Not Surprised by Qatar Lawsuit Given Hajj Lies*, NATIONAL (June 11, 2018), <https://www.thenational.ae/world/gcc/gargash-we-re-not-surprised-by-qatar-lawsuit-given-hajj-lies-1.739057> (quoting Emirati Foreign Minister Dr. Anwar Gargash).

¹⁰⁴ Joseph S. Nye, Jr., *Soft Power and American Foreign Policy*, 119 POL. SCI. Q. 255, 256 (2004).

construed.¹⁰⁵ The irony of suggesting a route for dispute de-escalation through recourse to the failed mechanisms that launched the dispute onto the docket of the ICJ is obvious. However, soft power works on multiple levels and often emerges from the “cavities” of multilateralism to give expression to “power beneath the surface,”¹⁰⁶ particularly when discursive settings can return to a mission-centered purpose for reestablishing relationships.

Qatar has deployed an array of soft power initiatives that reform-minded Saudis may quietly envy.¹⁰⁷ It has positioned itself as a voice of independent news in the Arab world, as a satellite of U.S. higher education institutions, as a venue for the 2001 Doha Round of WTO talks, the 2012 United Nations Climate Change Conference (“COP 18”), the 2006 Asian Games, and the 2022 FIFA World Cup.¹⁰⁸

¹⁰⁵ See Francesco Francioni, *International ‘Soft Law’: A Contemporary Assessment*, in *FIFTY YEARS OF THE INTERNATIONAL COURT OF JUSTICE: ESSAYS IN HONOUR OF SIR ROBERT JENNINGS* 167, 167–68 (Vaughn Lowe & Malgosia Fitzmaurice eds., 1996) (noting the operation of soft law outside of the system of formal sources that are nevertheless capable of producing legal effects); Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 *INT’L ORG.* 421, 423 (noting that “soft law facilitates compromise, and thus mutually beneficial cooperation, between actors with different interests and values, different time horizons and discount rates, and different degrees of power”).

¹⁰⁶ PETER VAN HAM, *SOCIAL POWER IN INTERNATIONAL POLITICS* 3 (“power beneath the surface”), 70 (“cavities” of multilateralism) (2010).

¹⁰⁷ The new Saudi crown prince, Mohammed bin Salman has launched a series of anti-corruption and moderate Islam reforms that have suggested the crown prince already has undertaken “[t]he most significant reform process . . . anywhere in the Middle East today”. Thomas L. Friedman, *Saudi Arabia’s Arab Spring, at Last*, *N.Y. TIMES* (Nov. 23, 2017), <https://www.nytimes.com/2017/11/23/opinion/saudi-prince-mbs-arab-spring.html>. For criticisms of Friedman’s opinion of bin Salman’s transformative intent, see Filkins, *supra* note 54.

¹⁰⁸ See ROBERTS, *supra* note 30, at 1, 3, 11, and ch. 8. On the movement away from an Egyptian-influenced education system to a more western curricula in the Gulf region, see Maher Kelifa, *Trading Culture: Have Western-Educated Emirati Females Gone Western?* 1 *OIDA INT’L J. SUSTAINABLE DEV.* 19 (2010). Georgetown University, Texas A&M, Northwestern University, Carnegie Mellon University, University of Calgary, and Virginia Commonwealth University have established campuses in Qatar. See *Education in Doha Qatar*, *ONLINEQATAR*, <https://www.onlineqatar.com/education/universities-qatar.aspx> (last visited Sept. 23, 2018).

A unique and intra-elite sense of cohesion, combined with its geo-strategic station between competing global interests, shape Qatar into “its own variety of a developmental state.”¹⁰⁹ Such a distinction adds complexity in the Arab world, where the world’s only major ruling monarchs reside.¹¹⁰

Qatar’s exercise of subtle power and influence might indicate a shift of the center of gravity in the Arab world toward the Persian Gulf.¹¹¹ However, this crisis is as much a consequential loss of social cohesion or group feeling (*asabîyah*) of the Gulf States, as expressed by the great fourteenth century Berber philosopher, Ibn Khaldûn in the *prolegomena* to his meditation on the rise and fall of great dynasties.¹¹² There, he presented a generational stage theory of development that explained the rise and fall of the dynastic state.¹¹³ Khaldûn drew attention to social facts and common circumstances that informed state creation and interaction in ways that continued to influence contemporary relations.¹¹⁴ With adept soft power experience, Qatar should recognize that any reclamation of constructive discourse is more likely to follow from informal means of dispute settlement from within the GCC and its emerging generational leadership change,¹¹⁵ if

¹⁰⁹ MEHRAN KAMRAVA, QATAR A: SMALL STATE, BIG POLITICS 167 (2013).

¹¹⁰ Lisa Anderson, *Absolutism and the Resiliency of Monarchy in the Middle East*, 106 POL. SCI. Q. 1 (1991).

¹¹¹ See KAMRAVA, *supra* note 109, at 165.

¹¹² See IBN KHALDÛN, THE MUQADDIMAH: AN INTRODUCTION TO HISTORY lxi, 15–68 (Franz Rosenthal trans., Princeton University Press 1967) (1377). On the translation of *asabîyah*, see *id.* at lxi. Khaldûn associated the loss of *asabîya* with dynastic decline: “as a rule no dynasty lasts beyond the life (span) of three generations.” *Id.* at 343. Transliterated spellings of the term vary, although it also commonly appears in English as *asabiyyah*.

¹¹³ See *id.* at 353–55 (discussing stages of success, consolidation of royal authority, leisure and tranquility, contentment and peacefulness, and waste and squandering).

¹¹⁴ See Sema Yılmaz Genç, *An Evaluation of Ibni Khaldun’s Thoughts of the Economical World*, in 2 GLOBALIZATION DIMENSIONS & IMPACTS: GLOBAL STUDIES, 47 (Hilal Yildiz, Farhang Morady & Ismail Şiriner eds., 2015) (on Khaldûn’s historiographic and sociological significance).

¹¹⁵ See Becca Wasser & Jeff Martini, *The Next Generation of Gulf Leaders*, FOREIGN AFF. (Feb. 14, 2016), <https://www.foreignaffairs.com/articles/persian-gulf/2016-02-14/next-generation-gulf-leaders> (noting the emergence of Gulf crown princes and key ministers who are in their 30s, 40, and 50s).

it is able to reconstitute a bond of *asabiyyah*. Although possible, such a solution appears remote, except in view of alternatives. Part IV draws conclusions about how a change of forum may mute the consequences of an Arab predicament that portages the internecine strife of a region to a forum likely to render judgment in favor of Qatar.

II. HOSPITALITY AND EXPULSION

The western legal tradition regards migration as a “permanent feature.”¹¹⁶ The customary law of nations construed hospitality to include habituated and recognized rules governing the legal status of aliens, strangers, and their right of movement and communication.¹¹⁷ Migration is an equally well-understood feature of Arabia, where the Haj pilgrimage to Mecca historically supported the frankincense caravan routes and traditions of nomadic grazing migrations.¹¹⁸ Pre-Islamic Bedouins regarded hospitality as “central to a noble character” and the three great monotheistic religions regard as virtuous the hospitable treatment of moving populations.¹¹⁹

Although supported in political and international literature, the treatment of strangers has become a “social problem on a global

¹¹⁶ Vincent Chetail, *Sovereignty and Migration in the Doctrine of the Law of Nations: An Intellectual History of Hospitality from Vitoria to Vattel*, 27 EUR. J. INT’L L. 901, 902 (2016) (noting the law of nations’ symbiotic relationship with migration “from its inception.”).

¹¹⁷ See generally *id.* (canvassing opinions of classical western thinkers, including Cicero, Vitoria, Grotius, Pufendorf, Wolff, and Vattel). But see Nan Seuffert, *Queering International Law’s Stories of Origin: Hospitality and Homophobia*, in QUEERING INTERNATIONAL LAW: POSSIBILITIES, ALLIANCES, COMPLICITIES, RISKS 213–35 (Dianne Otto ed., 2017) (investigating the allegorical significance of hospitality as employed by Vitoria and the sixteenth-century Spanish imperial rule of Mesoamerica). See generally GEORG CAVALLAR, THE RIGHTS OF STRANGERS: THEORIES OF INTERNATIONAL HOSPITALITY, THE GLOBAL COMMUNITY, AND POLITICAL JUSTICE SINCE VITORIA (2002); J. Irizarry y Puente, *Exclusion and Expulsion of Aliens in Latin America*, 36 AM. J. INT’L L. 252 (1942) (detailing the historical tolerance of domiciled aliens throughout Latin America).

¹¹⁸ See generally *Migrant Workers in the Arab Middle East*, 4 THIRD WORLD Q. 530 (1982).

¹¹⁹ Mona Siddiqui, *Welcoming in God’s Name: Hospitality in Islam and Christianity*, RELIGION & ETHICS (Jan. 5, 2017), <http://www.abc.net.au/religion/articles/2017/01/05/4600525.htm>.

scale,”¹²⁰ particularly in terms of challenges to refugee law.¹²¹ Hannah Arendt traced the modern origins of the problem to the massive spatial disorientation caused by the Great War.¹²² The disassociation of persons from the protective sphere of the state compromised persons’ political status,¹²³ creating a legal *lacuna* or *rightless* anomaly by which, through expulsion, a country could diminish its “burden of *indésirables*.”¹²⁴ As Arendt concluded, “[t]he world found nothing sacred in the abstract nakedness of being human.”¹²⁵

Postcolonial theorists, such as Edward Said, assigned to human migration a supreme importance “attendant upon war, colonialism and decolonization, economic and political revolution, and such devastating occurrences as famine, ethnic cleansing, and great power machinations.”¹²⁶ Recent challenges to refugee law among states of the Mediterranean region and Southeast Europe, has spawned a reexamination of restrictions on mass migration for reasons of national

¹²⁰ Nicholas Onuf, *Relative Strangers: Reflections on Hospitality, Social Distance and Diplomacy*, in HOSPITALITY AND WORLD POLITICS 173 (Gideon Baker ed., 2013) (noting wide-ranging philosophical and political treatments of hospitality from Kant to Derrida).

¹²¹ See, e.g., Filippo Grandi, *Protecting Refugees in Europe and Beyond: Can the EU Rise to the Challenge?* U.N. HUM. RTS. COMMISSION (Dec. 5, 2016), <http://www.unhcr.org/en-us/admin/hcspeeches/58456ec34/protecting-refugees-europe-beyond-eu-rise-challenge.html> (referring to the mass migration influx of refugees arriving across Europe beginning in 2015 from the Mediterranean Sea or overland through Southeast Europe); Donald Kerwin, *The Faltering US Refugee Protection System: Legal and Policy Responses to Refugees, Asylum-Seekers, and Others in Need of Protection*, 21 REFUGEE SURVEY Q. 1, (2012); Todd Scribner, *You Are Not Welcome here Anymore: Restoring Support for Refugee Resettlement in the Age of Trump*, 5 J. MIG. & HUM. STUD. 263 (2017) (assessing the Trump Administration’s migration policy).

¹²² See HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 268–75 (1951) (discussing statelessness as the newest mass phenomenon caused by the internal disintegration of World War I).

¹²³ See *id.* at 295 (“Only the loss of a polity itself expels [a person] from humanity.”).

¹²⁴ *Id.* at 281.

¹²⁵ *Id.* at 295.

¹²⁶ EDWARD W. SAID, *REFLECTIONS ON EXILE AND OTHER ESSAYS* xiv (2000).

security in Europe.¹²⁷ Migration policy and unsecured borders are now signature issues in U.S. political and legal discourse, as well.¹²⁸

A. Expulsion and the Fear of Terrorism

The circumstances surrounding the Qatari expulsions add another dimension to debates on international migration. Actions taken by the UAE against Qatari residents assert no connection to historical stateless classifications of *Heimatlosen* or *apatrides*—persons who (in the post-World War I *milieu* of Europe) “would not or could not assume the nationality of a successor state.”¹²⁹ They do not comport with traditionally understood explanatory economic migration theories.¹³⁰ The UAE’s actions also fall outside the bounds of belligerent occupation, as the UAE is not an occupying power within the meaning of Geneva Convention IV relative to the Protection of Civilians Persons in Time of War.¹³¹ Additionally, they make no claim connected to refugee status, *non-refoulement*, illegal entry, or itemized illegal activity. The sweeping generality of the UAE

¹²⁷ *Migrant Crisis: European Commission Proposes Asylum Reforms*, BBC (Apr. 6, 2016), <https://www.bbc.com/news/world-europe-35974982> (noting European Commission response to the mass influx of refugees across Europe beginning in 2015).

¹²⁸ *See generally Trump v. Hawaii*, 138 S. Ct. 2392 (2018) (holding constitutional a presidential proclamation upholding entry restrictions on specific foreign state aliens into the United States on legitimate national security grounds). *See also* Sarah Pierce & Andrew Selee, *Immigration Under Trump: A Review of Policy Shifts in the Year Since the Election*, MIGRATION POLY INST. (Dec. 2017), <https://www.migrationpolicy.org/research/immigration-under-trump-review-policy-shifts> (discussing political objectives to cut legal immigration and reshape the entry of foreign-born workers to the U.S.) (last visited Sept. 23, 2018).

¹²⁹ MICHAEL R. MARRUS, *THE UNWANTED: EUROPEAN REFUGEES IN THE TWENTIETH CENTURY* 70 (1985).

¹³⁰ *See* BOGUMIL TERMINSKI, *DEVELOPMENT-INDUCED DISPLACEMENT AND RESETTLEMENT: THEORETICAL FRAMEWORKS AND CURRENT CHALLENGES* 5 (2013) (explaining migration decisions in terms of wage differences (the Hicks Model), rural-urban dichotomy (the Harris-Todaro Model), stages of development (the Zelinsky Model), or positive/negative, push-pull factors (Everett Lee’s Push-Pull theory)).

¹³¹ *See* JEAN-MARIE HENCKAERTS, *MASS EXPULSION IN MODERN INTERNATIONAL LAW AND PRACTICE* 143–78 (1995) (on Geneva Convention IV and the issue of deportation of enemy civilians during belligerent occupation).

measures add confusion, if not pretext, to emerging views regarding possible remediation efforts to combat state-sponsored terrorism, and call into mind the infamous 1944 United States Supreme Court decision upholding the internment of United States citizens of mostly Japanese descent during World War II.¹³²

Since the events of 9/11, international law has concentrated on balancing the protection of human rights and the prevention of terrorism.¹³³ Liberal state responses to the challenges of terrorism presented a multipronged intermix of political, law enforcement, and military actions,¹³⁴ which prompted criticisms of the inability of the liberal state to protect democratic notions of freedom and core secular values.¹³⁵ Important examples in U.S. constitutional history have upheld national security restrictions on individual liberties, including the rights of citizens.¹³⁶ On balance, “restrictions on individual liberties . . . have been upheld in the context of national security imperatives

¹³² See generally *Korematsu v. United States*, 323 U.S. 214 (1944) (justifying a presidential executive order to intern Japanese Americans based on national security notwithstanding application of the Equal Protection Clause’s strict judicial scrutiny standard for race-based classifications). In *Trump v. Hawaii*, the majority seemingly overruled *Korematsu*, (C.J. Roberts noting the decision “was gravely wrong” and “has no place in law under the [c]onstitution” even though the majority noted that “*Korematsu* ha[d] nothing to do with this case.”). See *Trump*, 138 S. Ct. at 2423.

¹³³ See *Human Rights, Terrorism and Counter-Terrorism, Fact Sheet No. 32*, OFF. U.N. HIGH COMMISSIONER HUM. RTS., at 19 (2008), <https://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>.

¹³⁴ See PAUL WILKINSON, *TERRORISM VERSUS DEMOCRACY: THE LIBERAL STATE RESPONSE* chs. 4–6 (2d ed. 2006). See generally Cynthia Banham, *The Torture of Citizens After 9/11: Liberal Democracies, Civil Society and the Domestic Context*, 20 INT’L J. HUM. RTS. 914 (2016).

¹³⁵ See Orlando Patterson, *Freedom and 9/11*, 21 DEMOCRACY: A JOURNAL OF IDEAS (2011), <https://democracyjournal.org/magazine/22/freedom-and-911/>.

¹³⁶ See, e.g., Espionage Act of 1917, Pub. L. No. 65–24, 40 Stat. 217 (repealed 1948); Sedition Act of 1918, Pub. L. No. 65–150, 40 Stat. 553 (repealed 1921); Alien Registration Act of 1940 [Smith Act], Pub. L. 76–670, 54 Stat. 670 (repealed 1950); and various forms of emergency legislation, including, National Emergencies Act of 2000, 50 U.S.C. § 1621; International Emergency Economic Powers Act of 1977 [IEEPA], Pub. L. 95–223, 91 Stat. 1626 (codified as amended at 50 U.S.C. §§ 1701–1706 (2000)); USA Patriot Act of 2001, Pub. L. No. 107–56, 115 Stat. 272.

... that would likely not have been permitted absent such justifications.”¹³⁷

Responses from the Arab world noted the fitful liberal reactions, described generically by the former deputy director of the International Crisis Group’s Middle East branch as the flailing of a “blinded Cyclops.”¹³⁸ The inability of western states to frame a synthetic and coherent response to terrorism stimulated the subaltern reorientation within the Arabian Peninsula world toward its own assessment of threats to security—sectarian conflicts between Shiite and Sunnis and challenges to monarchic rule stemming from the Arab Spring.¹³⁹

In a continuing display of confused and cross-purpose foreign policy, the Trump administration initially presented a mixed message on the Qatari crisis.¹⁴⁰ Secretary of State Tillerson expressed sympathy for Qatar in the face of the Saudi-led boycott in 2017, whereas President Trump declared Qatar a “funder of terror at a very high level.”¹⁴¹ President Trump then reversed his position and described

¹³⁷ Rosa Ehrenreich Brooks, *War Everywhere: Rights, National Security Law, and the Law of Armed Conflict in the Age of Terror*, 153 U. PENN. L. REV. 675, 698 (2004) (reviewing U.S. case law and balancing tests employed by courts to acquiesce, defer, or steer clear of ripeness or political questions involving executive judgments on restrictions of liberty during ongoing national security imperatives).

¹³⁸ Joost Hilterman, *Deep Traumas, Fresh Ambitions*, in LEGACIES OF THE IRAN-IRAQ WAR (Middle East Research and Information Project, Spring 2018), <https://www.merip.org/mer/mer257/deep-traumas-fresh-ambitions> (specifically noting U.S. policy since the 2003 invasion of Iraq). See MADAWI AL-RASHEED, *A HISTORY OF SAUDI ARABIA* xiii (2d ed. 2010) (on the impact of 9/11 and sectarian concerns in Saudi Arabia).

¹³⁹ See Borzou Daragahi, *9/11 from Arab Shores*, FOR. POL’Y (Sept. 2011), <https://foreignpolicy.com/2011/09/09/911-from-arab-shores/>.

¹⁴⁰ See Robert Malley & Jon Finer, *Fixing Trump’s Blunders on Qatar*, WASH. POST (June 9, 2017), https://www.washingtonpost.com/news/global-opinions/wp/2017/06/09/fixing-trumps-blunders-on-qatar/?utm_term=.560f684c8186 (calling U.S. mixed messages “head-spinning”).

¹⁴¹ Peter Baker, *Trump Now Sees Qatar as an Ally Against Terrorism*, N.Y. TIMES (Apr. 10, 2018), <https://www.nytimes.com/2018/04/10/world/middleeast/trump-qatar-terrorism.html> (quoting President Trump). Conflicting reports have emerged about whether the Saudis and Emiratis would have launched the blockade without prior approval from the White House. See Filkins, *supra* note 54 (quoting a former

Qatar as a partner in the fight against extremism.¹⁴² At the same time, Qatar announced plans to double its investments in the U.S. to \$250 billion.¹⁴³

Either display sublimated direct consideration of the underlying expulsion issue. Executed with due process and mindful of individual circumstances, the expulsion of aliens is a long and established, but not absolute, sovereign right of states.¹⁴⁴ The International Law Commission's ("ILC") Draft Articles on the

U.S. intelligence officer who claimed the White House "gave the green light" and a senior administration official, who denied the claim).

¹⁴² See *id.* (noting the "remarkable turnaround" in US policy toward Qatar).

¹⁴³ See David A. Patten, *Qatar's Emir Promises To Step Up Ties, Invest \$250 Billion in US*, NEWSMAX (Apr. 13, 2018), <https://www.newsmax.com/newsfront/emir-tamim-qatar-donald-trump-middle-east/2018/04/13/id/854468/> (noting President Trump more recently called the Qataris "great friends" as its emir promised to double trade and investment with the US, including a possible \$10 billion partnership with Exxon to develop U.S. shale oil deposits, the purchase of a \$300 million guided missiles system, \$18 billion in additional investments in the U.S. by 2020, a \$1.7 Qatar Airways letter of intent to purchase fighter jets from Boeing, and possible investment projects in Florida, Texas, South Carolina, and Washington, D.C.).

¹⁴⁴ See *Expulsion of Aliens in International Human Rights Law* (OHCHR Discussion Paper, Sept. 2006), <http://www2.ohchr.org/english/issues/migration/taskforce/docs/Discussion-paper-expulsions.pdf> (recognizing the qualified right of states to regulate the presence of foreigners on their territory); C-143—Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), *adopted* June 24, 1975, INT'L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C143#A13 (recognizing expulsion in accordance with individual safeguards). See also Jorge Bustamante (Special Rapporteur on the Human Rights of Migrants), *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶ 64, U.N. Doc. A/HRC/7/12 (Feb. 25, 2008) (affirming due process treatment on individual bases for irregular migrants and those persons involved in interceptions at sea). Doctrinal references to the right of expulsion abound. See, e.g., Irizarry y Puente, *supra* note 117, at 257 (noting in Latin America the right to remain "is a privilege" subject to law); PATRICK DAILLER & ALAIN PELLET, *DROIT INTERNATIONAL PUBLIC* 664 (Paris: L.G.D.J. 1999) (noting the right is generally recognized); Lawrence Preuss, *International Law and Deprivation of Nationality*, 23 GEO. L.J. 250, 272 (1934) (affirming the right to expel aliens is not in doubt); HENCKAERTS, *supra* note 131, at 45 (indirectly acknowledging the right except when violative of "non-discrimination principle"); Lamin Jalamang Sisi, *Expulsion of Aliens in International Law: Some African Case Studies* 84-85 (doctoral dissertation, Johns Hopkins, 1975) (confirming the right to expel).

Expulsion of Aliens (2014), recognized a general right of states to expel aliens from their territory, but only “in accordance with . . . other applicable rules of international law, in particular those relating to human rights.”¹⁴⁵ The Draft Article’s specific reference to human rights assumed a respect for human rights that necessarily arises from expulsion cases. This justification, if not derived from treaty law, finds support in general rules prohibiting arbitrariness, abuse of rights, and denial of justice.¹⁴⁶ Case law and state practice support consideration of procedural due regard, as discussed below.

For example, in the *Maal Case*, an early twentieth century arbitration between the Netherlands and Venezuela, “large discretionary powers” inhered in the right of a state to expel “in a proper and lawful manner” persons “dangerous to the welfare of the country.”¹⁴⁷ In the 1980s, the Iran-United States Claims Tribunal noted that international law guaranteed “certain procedural and substantive minimum standards” even though a state had “wide discretion” to expel foreigners.¹⁴⁸ Security Council Resolution 1456 (2003) reflected the mix of legal factors involved in expulsion cases, including international criminal and humanitarian law, refugee law, and human rights law, and these considerations stand behind the Council’s conclusion that “[s]tates must ensure that any measure taken to combat terrorism comply with all their obligations under international law.”¹⁴⁹ If done *en masse*, problems arise.¹⁵⁰

¹⁴⁵ Art. 3, Draft Articles on the Expulsion of Aliens, with commentaries. International Law Commission A/69/10 (Nov. 11, 2014), http://legal.un.org/ilc/texts/instruments/english/commentaries/9_12_2014.pdf.

¹⁴⁶ *See id.* cmt. (2).

¹⁴⁷ *Maal Case*, Mixed Claims Commission, Netherlands-Venezuela, June 1, 1903, X UNRIAA 730, 731.

¹⁴⁸ *Yeager v. The Islamic Republic of Iran*, Iran United States Claims Tribunal, Award of Nov. 2, 1987, 17 IRAN-U.S. CLAIMS TRIBUNAL REP. 92, 106.

¹⁴⁹ S.C. Res 1456, ¶ 6 (Jan. 23, 2003), <https://documents-dds-ny.un.org/doc/undoc/GEN/N03/216/05/PDF/N0321605.pdf?OpenElement>.

¹⁵⁰ *See* JULIA WOJNOWSKA-RADZIŃSKA, THE RIGHT OF AN ALIEN TO BE PROTECTED AGAINST ARBITRARY EXPULSION IN INTERNATIONAL LAW 17 (2015) (citing the UN Special Rapporteur on the Rights of Non-Citizens’ report on collective expulsion of aliens).

i. Collective Expulsion and Countervailing UAE and Qatari Arguments

The UAE argued that its case was not about racial discrimination based on “national origin” but about lawful measures against the State of Qatar, not its nationals.¹⁵¹ The UAE objected to the application of the Convention, arguing that “the preconditions for the seisin of the Court” were never fulfilled.”¹⁵² Qatar summarized the UAE’s actions as “measures that *purposefully* target[ed] and infringe[d] the rights of Qataris protected under the Convention *on the basis of their national origin*.”¹⁵³

Article 5 of CERD requires states parties to guarantee the equal enjoyment of basic human rights to all, regardless of race or national origin.¹⁵⁴ Article 2 of the Convention obligates states to eliminate racial discrimination.¹⁵⁵ According to the Convention’s *travaux préparatoires*, the articles, taken together, “[e]nsure that non-citizens are not subject to collective expulsion, in particular situations where there are insufficient guarantees that the personal circumstance of each of the persons concerned have been taken into account.”¹⁵⁶

Initially, expulsion related to the forced removal of persons across a state boundary. The late Cherif Bassiouni, a leading authority on international criminal law, noted that the prohibition of deportation now includes forced population transfers applied to the “compulsory movement of people from one area to another within the same State.”¹⁵⁷ The International Criminal Court (“ICC”) statute includes

¹⁵¹ Qatar v. UAE, Provisional Measures, Verbatim Record CR 2018/15, Friday, June 29, 2018, at 4:30 pm, at 3 (Mr. Pellet) <https://www.icj-cij.org/files/case-related/172/172-20180729-ORA-02-01-BI.pdf>.

¹⁵² *Id.* at 4.

¹⁵³ Qatar v. UAE, Provisional Measures, Verbatim Record CR 2018/12, Wednesday, June 27 2018, at 10 am, at 34 (Ms. Amirfar) (emphasis in original).

¹⁵⁴ See CERD, art. 5, *supra* note 3.

¹⁵⁵ See *id.*, art. 2.

¹⁵⁶ Committee on the Elimination of Racial Discrimination, General Recommendation XXX on Discrimination Against Non-Citizens, UN doc. CERD/C/64/Misc.11/rev.3 (2004), ¶ 26.

¹⁵⁷ M. CHERIF BASSIOUNI, CRIMES AGAINST HUMANITY IN INTERNATIONAL CRIMINAL LAW 312 (2d rev. ed, 1999).

among its definition of crimes against humanity “deportation or forcible transfer of population.”¹⁵⁸ The ILC Draft Articles define expulsion to mean “a formal act or conduct attributable to a State by which an alien is compelled to leave the territory of that State.”¹⁵⁹ Exceptions include extradition, surrender to an international criminal court or tribunal, or the non-admission of an alien to a state.¹⁶⁰ Distinctions arise with regard to persons unlawfully present in a territory¹⁶¹ and to refugees.¹⁶² However, the Draft Articles “move beyond the national laws of many states and the European Union” by covering aliens regardless of whether they entered the state legally.¹⁶³

¹⁵⁸ Rome Statute of the International Criminal Court art 7(1)(d), July 17, 1998, 2187 U.N.T.S. 90, (*entered into force* July 1, 2002). The Statute defines deportation or forcible transfer of population to mean “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.” *See id.* art. 7(2)(d). Unlawful deportations or transfers are also classified as war crimes. *See id.* art. 8(2)(a)(vii). The ICC also establishes “persecution” as a separate crime against humanity—if done against an identifiable national group on grounds impermissible under international law. *See id.* art. 7(1)(h). Deportation has been recognized as a crime against humanity in each of the major international criminal instruments prior to the ICC, including the Nuremberg Charter, the Tokyo Charter, the Allied Control Council Law No. 10, and the statutes of the international criminal tribunals for the former Yugoslavia and Rwanda. The long-standing definition of “deportation” as a crime against humanity included the crime of forced population transfer within a state’s borders.

¹⁵⁹ Art. 2, 2014 Report, *supra* note 101, at 4.

¹⁶⁰ *Id.*

¹⁶¹ For various conventional treatments of lawful or irregular aliens, *see* International Covenant on Civil and Political Rights art. 13, Dec. 19, 1966, 999 U.N.T.S. 14668 (*entered into force* Mar. 23, 1976); Convention Relating to the Status of Refugees art. 32, July 28, 1951, 189 U.N.T.S. 150 (*entered into force* Apr. 22, 1954) [hereinafter Refugee Convention]; Convention Relating to the Status of Stateless Persons, *adopted on* Sept. 28, 1954, 360 U.N.T.S. 117 (*entered into force* June 6, 1960) (various declarations and reservations); Convention on the Reduction of Statelessness art. 31, Aug. 31, 1961, 989 U.N.T.S. 175 (*entered into force* Dec. 13, 1975).

¹⁶² *See* Refugee Convention, *supra* note 161.

¹⁶³ Sean D. Murphy, *The Expulsion of Aliens and Other Topics: The Sixty-Fourth Session of the International Law Commission*, 107 AM. J. INT’L L. 164, 165–66 (2013). Important human rights conventions do differentiate between lawful aliens and unlawful aliens on matters of expulsion. *See* Convention Relating to the Status of Refugees, Art. 32, July 28, 1951, 189 UNTS 150; International Covenant on Civil and Political Rights, Art. 13, Dec. 16, 1966, 999 UNTS 171 [hereinafter ICCPR]; European Convention on Establishment, Art. 3, Dec. 13, 1955, ETS No. 19,

In line with established international law, the Draft Articles preserve the extraterritorial prohibition of *refoulement*, which protects refugees from returning to frontiers of territories where they have a well-founded fear of persecution based on a limited set of considerations.¹⁶⁴ No contracting state shall return (“*refouler*”) a refugee to the frontier territories where life or freedom would be threatened.¹⁶⁵

ii. Individual Assessment of Circumstance

The expulsion of aliens as a group egregiously disregards the individual assessment of circumstance, as specifically required in several international human rights treaties and the Draft Articles.¹⁶⁶

available at <http://conventions.coe.int/Treaty/en/Treaties/Html/019.htm>; American Convention on Human Rights, Art. 22(6), Nov. 22, 1969, 1144 UNTS 123, 9 ILM 673 (1970), as amended by protocols of Nov. 14, 1988, 28 ILM 156, and June 8, 1990, 29 ILM 1447; African Charter on Human and Peoples’ Rights, Art. 12(4), June 27, 1981, 21 ILM 58 (1982); Arab Charter on Human Rights, Art. 26, May 22, 2004, reprinted in 12 INT’L HUM. RTS. REP. 893 (2005).

¹⁶⁴ Art. 6(b), 2014 Report, *supra* note 101, at 10. *See also* Refugee Convention, *supra* note 161, art. 1(A)(2) (“owing to [a] well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”).

¹⁶⁵ Refugee Convention, *supra* note 161, art. 33(1). *See also* European Convention of Human Rights (Protocol 4) art. 3, E.T.S. No. 46 (1963); *non-refoulement* is implicit in art. 3 of the European Convention on Human Rights (“no one shall be subjected to torture or to inhuman or degrading treatment or punishment”). The Human Rights Committee, likewise, has interpreted art. 7 of the ICCPR as prohibiting expulsion where there is a risk of torture. *See* General Comment No. 20/44, ¶ 9, Apr. 3, 1992. The Committee on the Rights of the Child adopted a General Comment on unaccompanied and separated children outside their country of origin, noting such children should not be returned “where there are substantial grounds for believing that there is a real risk of irreparable harm.” *See* General Comment No. 6, ¶ 27, Sept. 1, 2005. *See also* Convention Against Torture art. 3, 1465 U.N.T.S. 85 (*entered into force* June 26, 1987), (applying to every such person regardless of threats to public security).

¹⁶⁶ *See* art. 9, 2014 Report, *supra* note 101, at 14 (Prohibition of collective expulsion) and cmt. (1) (citing the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (art. 22(1)), the American Convention on Human Rights (art. 22(9)), the European Convention on Human Rights (art. 4, Protocol No. 4), the African Charter on Human and Peoples’ Rights (art. 12(5)), and the Arab Charter on Human Rights (art. 26(2)). *See also* art. 4, 2014 Report, *supra* note 101, at 6 (holding that “[a]n alien may be expelled only in pursuance of a decision reached in accordance with law.”).

Case law before the European Court of Human Rights (“ECHR”) adds to the well-established definition of collective expulsion; such action precludes any measure taken by a competent authority to compel aliens as a group to leave a country, except where taken after and on the basis of a reasonable and objective examination of the particular cases of each individual alien of the group.¹⁶⁷ In the ECHR, the term “aliens” refers to persons lawfully residing, domiciled or merely passing through a country.¹⁶⁸ The focal point of review in these circumstances relate generally to a determination that the applicant runs a real risk of suffering ill-treatment if returned.¹⁶⁹

The UAE’s actions circumvent the persecution trigger mechanism for the application of the *refoulement* prohibition. Qataris express no fear of returning to their own government. However, assessments relating to persons subject to expulsion (*ratione personae*) and to the measures of expulsion (*ratione materiae*) depend on a reasonable and objective examination of the particular case of each individual alien.¹⁷⁰ With no specific allegation of criminality or wrongdoing, the weight of evidence indicates that international law prohibits the UAE’s collective expulsions,¹⁷¹ or that the UAE is

¹⁶⁷ See, e.g., *Andric v. Sweden*, application no. 45917/99, ECtHR (relating to Art. 4 of Protocol No. 4—Prohibition of Collective Expulsion of Aliens).

¹⁶⁸ See *Case of Hirsi Jamaa and Others v. Italy*, application no. 27765/09, ECtHR (2012) (involving the interception of Somali and Eritrean nationals and disembarkation to Libya by Italian naval authorities).

¹⁶⁹ See *Hilal v. United Kingdom*, application no. 45276/99, sec. 60 ECRH 2011-II; See also *Irizarry y Puente*, *supra* note 117, at 264–67 (reviewing national security expulsion factors from Latin American history).

¹⁷⁰ See Rep. of the Int’l Law Comm’n, Fifty-Ninth Session (7 May–5 June and 9 July–10 August 2007), ¶ 199 n. 400, U.N. Doc. A/62/10 (2007) (prohibition of collective expulsion); ILC Drafting Committee, *Progress Report on the topic ‘Expulsion of Aliens,’ INT’L L. COMMISSION* (July 24, 2009), http://legal.un.org/ilc/guide/9_12.shtml.

¹⁷¹ See art. 5(2), 2014 ILC Draft Articles, *supra* note 101, at 8 (“A State may only expel an alien on a ground that is provided for by law”); art. 19(1) of the Charter of Fundamental Rights of the European Union (Collective expulsions are prohibited); art. 22(9) American Convention on Human Rights; art. 26(2), Arab Charter on Human Rights; art. 12(5), African Convention on Human and Peoples’ Rights [prohibiting mass expulsions aimed at national, racial, ethnic or religious groups]; and art. 25, Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms.

attempting to fabricate a national emergency shield or derogation from immigration practices. While the Draft Articles provide for expulsion “on grounds of national security or public order,”¹⁷² and preclude collective expulsions except for “enemy aliens in the context of an armed conflict,”¹⁷³ “any form of disguised expulsion of an alien is prohibited.”¹⁷⁴ Disguised expulsions contemplate constructive expulsions, which apply to methods of expulsion that shade the adoption of a decision to expel,¹⁷⁵ or, to actions intended to infringe the human rights of the alien in question.¹⁷⁶ Furthermore, the Draft Articles preclude expulsions that are “arbitrary” or “punitive in nature.”¹⁷⁷

National security derogation clauses tend to hinge on one or a combination of four factors, including: (1) a sudden and unforeseen emergency of unknown duration; (2) the potential gravity of the emergent situation as dangerous or life threatening; (3) the pronouncement by an official acting under the color of state authority; and (4) the necessity and immediacy of a response.¹⁷⁸ Sean Murphy noted that “several major human rights instruments set forth obligations relating to expulsion, but also allow for derogations from those obligations in time of emergency.”¹⁷⁹ The Refugee Convention, for instance, subjects the prohibition against *refoulement* to exceptions based on national security or public order.¹⁸⁰ However, even in these circumstances, which do not apply here, and “[e]xcept where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear [themselves] and be

¹⁷² 2014 Report, *supra* note 101, art.7, at 12.

¹⁷³ *Id.* art. 9(4).

¹⁷⁴ *Id.* art. 10(1).

¹⁷⁵ *Id.* art. 10, cmt 1.

¹⁷⁶ *Id.* art. 10, cmt 2.

¹⁷⁷ *Id.* art 19(1)(a).

¹⁷⁸ U.S. Congress, Senate Special Committee on the Termination of the National Emergency, National Emergency, hearings, 93rd Cong., 1st sess., April 11–12, 1973 (Washington: GPO, 1973), p. 277; *See also* Matti Pellonpää, *Expulsion in International Law: A Study in International Aliens Law and Human Rights with Special Reference to Finland 86–93* (doctoral dissertation, Faculty of Law, University of Helsinki, 1984) (on derogations that threaten the life of the nation).

¹⁷⁹ Murphy, *supra* note 163, at 166.

¹⁸⁰ Refugee Convention, *supra* note 161, at art. 32(1).

represented before competent authority.”¹⁸¹ More generally, comparative international law reveals a variety of procedural measures and guarantees attaching to the expulsion of aliens.¹⁸² Grounds for revoking procedural guarantees based on national security or public order still require precise application in view of individual circumstances.¹⁸³

B. A Minor and Major Problem

The history of expulsions found notable expressions in the twentieth century with the turmoil and aftermath of two world wars.¹⁸⁴ Although framed in terms of western and central European diasporas, other examples equally affected the Muslim world. In 1947, millions of Muslims were expelled from India to Pakistan, while millions of Hindus and Sikhs trekked in the opposite direction—all a consequence of partitionment following British colonial rule.¹⁸⁵ Other exoduses included the flight of 750,000 Palestinian Arabs in 1948,¹⁸⁶ the Algerian exodus to Morocco and Tunisia in 1956, tribal diffusions due to decades of war in Sudan, Muslim migrations due to strife in Bosnia in 1992, and other population dispersions due to the Gulf War, the

¹⁸¹ *Id.* art. 32(2).

¹⁸² See Wojnowska-Radzińska, *supra* note 150, ch. 4 (on the variety of procedural guarantees against arbitrary expulsion, including issuance by a competent authority, notice, audi alteram partem (the right to be heard), the right of appeal, access to counsel).

¹⁸³ See *id.* at 136–40.

¹⁸⁴ See generally ARENDT, *supra* note 122; R. M. DOUGLAS, ORDERLY AND HUMANE: THE EXPULSION OF THE GERMANS AFTER THE SECOND WORLD WAR (2013). See also HENCKAERTS, *supra* note 131, at 1–2 (noting numerous historical examples including the expulsion of Jews from England (1290) and Spain (1492), Muslims from Spain (1610), Huguenots from France (1685), Protestants from Salzburg (1731), French-Acadians from Nova Scotia (1755), the Cherokee Nation from Georgia to Oklahoma (1835–1838), Armenians from the Ottoman Empire (1915–1916), and Jews from Nazi Germany).

¹⁸⁵ William Dalrymple, *The Great Divide: The Violent Legacy of Indian Partition*, NEW YORKER (June 29, 2015), <https://www.newyorker.com/magazine/2015/06/29/the-great-divide-books-dalrymple>.

¹⁸⁶ Dawn Chatty, *The Duty to be Generous (Karam): Alternatives to Rights-Based Asylum in the Middle East*, 5 J. BRIT. ACAD. 177, 183 (2017).

Kurdish diaspora, and the Arab Spring.¹⁸⁷ In 1990, Saudi Arabia expelled one million Yemenis in response to the Sana'a government's support of Saddam Hussein's invasion of Kuwait.¹⁸⁸ More recently, the Saudi kingdom launched another expulsion program after years of consuming migrant labor.¹⁸⁹ Within a four-month period in 2013–2014, Saudi Arabia expelled more than 160,000 Ethiopians.¹⁹⁰ Saudi expulsions of Ethiopian and Yemeni migrants eclipse significantly the magnitude of the numbers involved in the Qatari case now before the

¹⁸⁷ Khadija Elmadmad, *An Arab Convention on Forced Migration: Desirability and Possibilities*, 3 INT'L J. REFUGEE L. 461, 462, 464, 480 (1991). Many demographic separations and large-scale population transfers result as partitionments and remedies for ethnic war; Ewa Tabeau & Jakub Bijak, *War-Related Deaths in the 1992-1995 Conflicts in Bosnia and Herzegovina: A Critique of Previous Estimates and Recent Results*, 21 Eur. J. Population 187, 189–90 (2005) (noting the “extraordinary migration and ethnic cleansing of Bosnian muslims by Serbs); Patrick Kingsley, “Arab Spring Prompts Biggest Migrant Wave Since Second World War,” *Guardian* (Jan. 3, 2015), <https://www.theguardian.com/world/commentisfree/2015/jan/03/arab-spring-migrant-wave-instability-war> (noting mass migrations across much of the Arab world due to spiraling instability since the Arab Spring). For an assessment in relation to the propensity for violence, see generally Chaim D. Kaufmann, *When All Else Fails: Ethnic Population Transfers and Partitions in the Twentieth Century*, 23 INT'L SECURITY 120 (1998).

¹⁸⁸ Ian Black, *Saudi Arabia Expels Thousands of Yemeni Workers*, *GUARDIAN* (Apr. 2, 2013), <https://www.theguardian.com/world/2013/apr/02/saudi-arabia-expels-yemeni-workers>.

¹⁸⁹ See Felix Horne, *Why Saudi Arabia Must Halt the Deportation of Half a Million Ethiopians*, *HUMAN RIGHTS WATCH* (Aug. 24, 2017, 8:40 AM), <https://www.hrw.org/news/2017/08/24/why-saudi-arabia-must-halt-deportation-half-million-ethiopians>; Bethan McKernan, *Saudi Arabia 'Deports 40,000 Pakistani Workers Over Terror Fears'*, *INDEPENDENT* (Feb. 13, 2017, 4:59 PM), <https://www.independent.co.uk/news/world/middle-east/saudi-arabia-deports-40000-pakistan-workers-terror-fears-attacks-counter-terrorism-a7578151.html>. The expulsion of Yemeni workers from Saudi Arabia has been associated with the recruitment efforts of the Houthi against anti-Saudi forces in the Yemen civil war. See Bethan McKernan, *Yemen Civil War: Saudi Expulsion of Yemeni Workers Swells Houthi Ranks*, *INDEPENDENT* (Mar. 11, 2018, 11:41 PM), <https://www.independent.co.uk/news/world/middle-east/yemen-civil-war-saudi-arabia-houthi-yemeni-workers-expel-deport-fighters-recruitment-al-qaeda-a8248506.html>.

¹⁹⁰ See Marina de Regt & Medareshaw Tafesse, *Deported Before Experiencing the Good Sides Of Migration: Ethiopians Returning From Saudi Arabia*, 9 AFR. & BLACK DIASPORA: INT'L J. 228, 229 (2015) (attributing the forced return of undocumented migrants to the indirect destabilizing effects of the Arab Spring).

Court. Additionally, Human Rights Watch reported that Pakistan “pushed out nearly 365,000 of [its] 1.5 million registered Afghan refugees [between 2014–2016], as well as just over 200,000 of the country’s estimated [one] million undocumented Afghans.”¹⁹¹ The UN International Organization for Migration (“IOM”) reported that Iran expelled 384,506 undocumented Afghans since January 2018.¹⁹² In 2017–2018, attacks by Myanmar’s armed forces against Rohingya Muslims pushed approximately 500,000 persons into to Bangladesh, killing thousands of civilians in the process.¹⁹³ Mohammed Abdiker, IOM director of operations and emergencies, categorically concluded that, since the beginning of 2018, Saudi Arabia has returned 17,000 Yemenis to their war-torn homeland that Saudi Arabian bombings forced them to flee.¹⁹⁴ On July 5, 2018, the U.S. Department of Homeland Security partially extended its 2015 Temporary Protected Status (“TPS”) for Yemenis based on “ongoing armed conflict” that “pose[d] a serious threat” to the “personal safety” of returning nationals.¹⁹⁵ Nevertheless, the International Rescue Committee

¹⁹¹ *Pakistan Coercion, UN Complicity: The Mass Forced Return of Afghan Refugees*, HUMAN RIGHTS WATCH (Feb. 13, 2017), <https://www.hrw.org/report/2017/02/13/pakistan-coercion-un-complicity/mass-forced-return-afghan-refugees>.

¹⁹² *See Return of Undocumented Afghans, Weekly Situation Report 17-23 June 2018*, U.N. INT’L ORG. MIGRATION (2018), https://www.iom.int/sites/default/files/situation_reports/file/iom_afghanistan-return_of_undocumented_afghans_-sitrep_17-23june2018.pdf.

¹⁹³ Michael Safi, *Myanmar Treatment of Rohingya Looks Like ‘Textbook Ethnic Cleansing’*, *Says UN*, GUARDIAN (Sept. 11, 2017), <https://perma.cc/7XXL-NVUX> (reporting that U.N. Official deemed Myanmar’s actions “a textbook example of ethnic cleansing”); *Mission Report of OHCHR Rapid Response Mission to Cox’s Bazar, Bangladesh*, OFF. U.N. HIGH COMMISSIONER HUM. RTS. (Sept. 13–24 2017), <https://www.ohchr.org/Documents/Countries/MM/CXBMissionSummaryFindingsOctober2017.pdf>.

¹⁹⁴ *See* Stephanie Nebehay, *U.N. Urges Saudi Arabia Not to Deport Yemeni Migrants to War Zone*, REUTERS (May 9, 2018, 6:45 AM), <https://www.reuters.com/article/us-yemen-security-saudi-migrants/u-n-urges-saudi-arabia-not-to-deport-yemeni-migrants-to-war-zone-idUSKBN1IA1F7>.

¹⁹⁵ *Designation of the Republic of Yemen for Temporary Protected Status*, FED. REG. (Sept. 3, 2015), <https://www.federalregister.gov/documents/2015/09/03/2015-21881/designation-of-the-republic-of-yemen-for-temporary-protected-status> (announcing TPS status for eligible Yemeni nationals residing in the U.S.). *See also* Colin Dwyer, *Trump Administration Renews Temporary Protected Status for Some Yemenis*, NPR (July 5, 2018, 8:43 PM),

estimated that the U.S. action “could ultimately result in the forcible return of an estimated 400 Yemeni citizens”¹⁹⁶ to an active war zone that the U.S.-supported¹⁹⁷ Saudi-led coalition is invading.

The small number of Qatari expulsions, framed in terms of a much larger and ongoing problem, support the timely significance of the application now before the Court.¹⁹⁸ This case focuses attention on one aspect of a worldwide problem, as topical today as during the marauding aftermath of WWI, yet still largely beyond the ambit of international judicial review.

III. AN ACT OF METAPHORICAL SIGNIFICANCE?

Aside from the factual circumstances of the Qatari expulsions, the metaphorical significance of portaging this regional drama to the docket of the ICJ may serve the interests and performative behaviors of multi-layered audiences, both internal to the disputants, and external, as presented on the stage of public opinion. Construed as an act of ceremonial profanation, Qatar’s suit conforms to the framework analysis of sociologist Erving Goffman,¹⁹⁹ who noted the utility of

<https://www.npr.org/2018/07/05/626242262/trump-administration-renews-temporary-protected-status-for-some-yemenis> (excluding Yemeni arrivals after certain dates depending continuous residence and physical presence in the U.S.).

¹⁹⁶ IRC *Statement on U.S. Decision on Yemen’s Temporary Protected Status*, INT’L RESCUE COMMITTEE (July 5, 2018), <https://www.rescue.org/press-release/irc-statement-us-decision-yemen-and-temporary-protected-status>.

¹⁹⁷ See Melissa Dalton, Hijab Shah, & Timothy Robbins, *U.S. Support for Saudi Military Operations in Yemen*, CTR. STRATEGIC & INT’L STUD. (Mar. 23, 2018), <https://www.csis.org/analysis/us-support-saudi-military-operations-yemen> (noting the U.S. has provided “intelligence, military advice, and logistical support to the Saudi Arabia-led military intervention in Yemen”).

¹⁹⁸ In discussing the lingering effect of judicial precedent in international law, one should always be mindful of the debate regarding art. 59 of the ICJ statute, which holds that “The decision of the Court has no binding force except between the parties and in respect of that particular case.” Statute of the International Court of Justice, ICJ, <https://www.icj-cij.org/en/statute>. A well-regarded presentation of the discussion can be found in R.Y. Jennings, *The Judiciary, International and National, and the Development of International Law*, 45 INT’L & COMP. L. Q. 1, 6ff. (1996) (on the value of international judicial precedent).

¹⁹⁹ See generally ERVING GOFFMAN, *THE PRESENTATION OF SELF IN EVERYDAY LIFE* (Garden City, N.Y.: Doubleday, 1959) (discussing the sociology of

interaction rituals used to express both vendetta and victimology,²⁰⁰ particularly when parties view negotiations as pointless.²⁰¹ Expressed in terms of international law, the weight of the law suggests Qatar's suit likely will prevail. Construed by the anti-Terror Quartet as a public act of shaming or spite, the emotional dynamics of Qatar's suit may not go unavenged.²⁰²

A. Courtroom Clash as a Reputational Value

The field of international relations has turned attention to binary explanations for causes of disputes, certainly since publication of Samuel Huntington's immensely influential 'clash of civilizations' thesis.²⁰³ The significance of the "clash" metaphor at the level of the ICJ reinforces the confrontation of countervailing legal principles dispassionately deconstructed and applied by a disinterested review body as a definitive resolution to a dispute. Peter Katzenstein and others have dissected Huntington's thesis, noting that it undervalues the discrete, pluralistic and weakly institutionalized underpinnings of the civilization idea, and that it is factually and empirically incorrect: "most of the world's violent clashes occur within rather than between

interaction dynamics and principles of dramaturgy); ERVING GOFFMAN, *INTERACTION RITUAL: ESSAYS IN FACE-TO-FACE BEHAVIOR* (1967) (ritualizing face-work and social interaction encounters).

²⁰⁰ *INTERACTION RITUAL*, *supra* note 199, at 86. Counsel for the UAE alluded to this point in discussions regarding provisional measures. *See* Qatar v. UAE Provisional Measures, Verbatim Record 2018/14, June 29, 2018, at 4:30 pm, at 6 (Pellet: "It is sometimes said, Mr. President, that States, some of them at least, exploit the Court for their own ends. This is a textbook case!").

²⁰¹ *See* Hassan Hassan, *There's No Space for Qatar to Save Face*, FOREIGN POL'Y (June 29, 2017, 11:41 AM), <https://foreignpolicy.com/2017/06/29/theres-no-space-for-qatar-to-save-face/> (suggesting the anti-Qatar quartet is not interested in negotiating).

²⁰² *See Part of Prof. David Des Roches Remarks during GIF Panel on the One Year Anniversary of the Gulf Crisis*, GULF INT'L FORUM 2:29 (June 15, 2018), <https://gulrif.com/part-of-prof-david-des-roches-remarks-during-gif-panel-on-the-one-year-anniversary-of-the-gulf-crisis/> (noting the crisis has degenerated into prideful spite actions).

²⁰³ *See generally* SAMUEL P. HUNTINGTON, *THE CLASS OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (1996) (portraying civilizations as coherent, monolithic, and disposed to clash).

different civilizations.”²⁰⁴ To construe this dispute more as a family feud than an inter-state rivalry layers complexity onto simplistic binary classifications. Moreover, international law and relations scholars have rephrased binary clashes, as for instance between legitimacy and legality,²⁰⁵ legitimacy and authority, or globalization/modernization and traditionalism.²⁰⁶ These counter-positions only further simplify the multi-tiered relational aspects involved in this case.

As the most politically liberal of the Gulf States, Qatar’s confrontations within the region attract comparisons to this latter binary juxtaposition as a force of modernization against tradition. Qatar’s lack of an indigenous Ulama class of Islamic legal scholars, powerfully established in Saudi Arabia, contributes to Qatar’s secular characterization as more comparable to Turkey than Saudi Arabia.²⁰⁷ However, presentations of this crisis in terms of the structural forces of globalization overlook the intramural tensions within Wahhabism and Saudi Arabia’s projection of its status as the Wahhabist counterforce to Shi’ism. Qatar’s discomfort with Saudi Arabia’s foreign policy, which projects a de facto alliance with U.S. and Israeli interests as against Iran, and possible concerns about Saudi Arabia’s stability, better account for the rudimentary intramural cause of this crisis rather than any conclusion of a peninsular turn toward liberalism.²⁰⁸

²⁰⁴ Peter J. Katzenstein, *A World of Plural and Pluralist Civilizations: Multiple Actors, Traditions, and Practices*, in CIVILIZATIONS IN WORLD POLITICS: PLURAL AND PLURALIST PERSPECTIVES 11 (2009).

²⁰⁵ See generally W. Michael Reisman, *Kosovo’s Antinomies*, 93 AM. J. INT’L L. 860 (1999); Bruno Simma, *NATO, the UN and the Use of Force: Legal Aspects*, 10 EUR. J. INT’L L. 1, 3 (1999); Martti Koskenniemi, *‘The Lady Doth Protest Too Much’: Kosovo, and the Turn to Ethics in International Law*, 65 MOD. L. REV. 159, 162 (2002).

²⁰⁶ See Khaled Fattah & K.M. Fierke, *A Clash of Emotions: The Politics of Humiliation and Political Violence in the Middle East*, 15 EUR. J. INT’L REL. 67, 68 (2009) (reviewing literature on binary clashes).

²⁰⁷ Birol Baskan & Steven Wright, *Seeds of Change: Comparing State-Religion Relations in Qatar and Saudi Arabia*, 33 ARAB STUD. Q. 96, 100 (2011) (noting the comparison to Turkey due to the lack of an indigenous Ulama class within Qatar).

²⁰⁸ See Craig Murray, *The Qatar Conundrum*, CRAIG MURRAY (June 5, 2017), <https://www.craigmurray.org.uk/archives/2017/06/the-qatar-conundrum/> (associating the blockade with the “Saudi Wahhabist mission to spread sectarian war against the Shia” rather than on Qatar’s embrace of liberalism); Filkins, *supra* note 54

The presumption of the clash metaphor is that formalized court structures are able to dispose of these clashes by rendering a legal judgment while not necessarily disposing of the underlying tensions. Soft law forums may downplay the necessity of rendering judgment while symbolically removing stigmatic spite actions to backchannel quarters, blunting, but not necessarily disposing of, tensions magnified by publicity and theatrics. Since 9/11, emotional dynamics associated with interstate conflict, particularly as related to terrorism, have received increasing scholarly attention.²⁰⁹ However, the formal mechanisms unlocking the jurisdiction of the ICJ present no mechanism for dealing with the dynamics of spite, humiliation, or shaming that stand behind the means of resolving this interstate conflict.

Qatar's appeal to the ICJ as a means to enforce compliance with CERD and remedy a broken relationship with Gulf State counterparts may rely on the international pressure generated by the reputation costs associated with noncompliance with an ICJ decision. This courtroom confrontation presents a symbolic form of dramaturgy that allows Qatar a self-aware and voluble stage to emote before a world audience that turns a tin ear to the plight of forced expulsions elsewhere in the region.²¹⁰ Costs associated with defiant noncompliance diminish a country's reputational commitment to the

(detailing Saudi pressure, with Trump Administration cooperation, to pressure the Palestinian Authority to agree to the settlement of the status of Jerusalem and the West Bank on terms "radically favorable to Israel"); *Wabbabbism v. Wabbabbism*, *supra* note 23, at 5 (disassociating liberal reforms in Qatar from "freedoms as defined in Western societies").

²⁰⁹ See Khaled Fattah & K.M. Fierke, *A Clash of Emotions: The Politics of Humiliation and Political Violence in the Middle East*, 15 EUR. J. INT'L REL. 67, 68 (2009) (on the collective sense of humiliation uniting Muslims in the post-9/11 geopolitical climate); Alex Danchev, *"Like A Dog!": Humiliation and Shame in the War on Terror*, 31 ALTERNATIVES: GLOBAL, LOC., POL. 259, 260 (2006) (noting the reciprocal and self-perpetuating consequences of invoking a state of exception to justify violations of the rule of law in the battle against terrorism).

²¹⁰ See generally THE PRESENTATION OF SELF IN EVERYDAY LIFE, *supra* note 199 (deriving sociological principles of communication and the art of impression from principles of dramaturgy).

rule of law and standing in the international community.²¹¹ Little evidence suggests that characterizing the UAE as outside the rule of law will serve as an inducement for or prophylactic against preserving the efficacy of an ICJ judgment.

B. An Opportunity for the GCC?

Soft power forums present discursive environmental opportunities removed from traditional multilateral rule-making formats, often encumbered by asymmetrical relationships between negotiating interests.²¹² They rearrange status-conferring expressions of decision-making by providing more flexible, informal, or hybrid methods of discourse and agenda setting.²¹³ Associational groups such as Troikas, Wise Men, IGAD, and the Arctic 5 represent examples of intentionally innovative, flexible sub-multilateral soft law structures designed to facilitate less formal persuasion channels of communication.²¹⁴ The six original members of the GCC created the organization to resemble the European Union, with the ideal of establishing a single common market and monetary system.²¹⁵

²¹¹ Heather L. Jones, *Why Comply? An Analysis of Trends in Compliance with Judgments of the International Court of Justice Since Nicaragua*, 12 CHL.-KENT J. INT'L & COMP. L. 57, 65 (2012) (discussing reputational costs and international community pressure associated with circumventions of ICJ judgments).

²¹² See Richard L. Williamson, Jr., *Hard Law, Soft Law, and Non-Law in Multilateral Arms Control: Some Compliance Hypotheses*, 4 CHI. J. INT'L L. 59, 65 (2003) (noting problems of asymmetrical negotiations).

²¹³ See VAN HAM, *supra* note 106, at 70–71 (discussing the advantages of more informal and smaller group formation for purposes of dispute settlement).

²¹⁴ See Christopher R. Rossi, *Nagorno-Karabakh and the Minsk Group: The Imperfect Appeal of Soft Law in an Overlapping Neighborhood*, 52 TEX. INT'L L.J. 45, 61 (2017).

²¹⁵ Mohammed Ahmad Naheem, *Legitimacy of the Summer 2017 GCC Crisis and Qatar's AML Framework*, 20 J. MONEY LAUNDERING CONTROL 405, 406 (2017). The six members of the GCC are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE. See *Member States*, SECRETARIAT GENERAL OF THE GULF COOPERATION COUNCIL, <http://www.gcc-sg.org/en-us/AboutGCC/MemberStates/pages/Home.aspx> (last visited Dec. 20, 2018). An economic growth projection report concluded that Gulf States economic consolidation would create the ninth largest economy in the world with the potential to become the sixth largest economy by 2030. See *GCC Could Become the World's Sixth Largest Economy by 2030: EY, EY* (Mar. 20, 2016),

Attempts to turn the GCC into a common security organization pre-date the organization's formal birth in 1981.²¹⁶ Although perceived as a stable and positive force on the Arabian Peninsula for almost four decades,²¹⁷ key policy-makers have most recently described the organization as “pretty much finished.”²¹⁸ According to Kristian Ulrichsen, Qatar's strained relationship with its Gulf neighbors represents the barometer of post-Arab Spring politics.²¹⁹ “Just as the uprising that ousted President Mubarak from power galvanized demonstrators across the region, so the reinstatement of military rule [in Egypt] sent a clear message about the embedded power of counter-revolutionary forces and vested interests.”²²⁰

Nevertheless, scholars have advocated for a “more insightful appreciation” of how the sub-state institutional processes of the GCC have contributed to the complexity of decision making in the Gulf,²²¹ at a minimum by serving as a forum to sustain diplomatic channels of communication. The utility of the GCC remains, despite the broad, yet dysfunctional outlines once oriented toward an economic union or

<https://www.ey.com/em/en/newsroom/news-releases/news-ey-gcc-could-become-the-worlds-sixth-largest-economy-by-2030> (“hovering just below Japan”).

²¹⁶ See generally Christian Koch, *The GCC As a Regional Security Organization*, KAS INT'L REP. 23 (2010), http://www.kas.de/wf/doc/kas_21076-544-2-30.pdf?1011101 (discussing the idea of a 1976 defense agreement, as well as the GCC's 1990 Doha Declaration on the need for a defense and security arrangement, Saudi Arabia's idea of a Peninsula Shield, the 2000 GCC Joint Defense Agreement, and subsequent intelligence cooperation).

²¹⁷ See Part of Amb. Anne Patterson Remarks during GIF Panel on the One Year Anniversary of the Gulf Crisis, GULF INT'L FORUM 0:26 (June 15, 2018), <https://gulfig.com/part-of-amb-anne-patterson-remarks-during-gif-panel-on-the-1-year-anniversary-of-the-gulf-crisis/> (lamenting the demise of the GCC, which “successive American administrations have looked to . . . as an island of stability in the Middle East.”).

²¹⁸ *Id.* at 0:15; Part of Kristian Ulrichsen Remarks during GIF Panel on the One Year Anniversary of the Gulf Crisis, GULF INT'L FORUM 0:43 (June 15, 2018), <https://gulfig.com/part-of-dr-kristian-ulrichsen-remarks-during-gif-panel-on-the-one-year-anniversary-of-the-gulf-crisis/> (casting doubt on “any lingering hopes” for the GCC). *But see* Statement of David Des Roches, *supra* note 202, at 0:47 (noting the GCC may one day re-emerge after a period of dormancy).

²¹⁹ Ulrichsen, *supra* note 25, at 182.

²²⁰ *Id.* at 183.

²²¹ Thompson & Quilliam, *supra* note 26, at 1–2.

collective security organization. Historian Hanna Batatu explored the deep significance of kinship, more so than professional status or epistemic discourse, as the crucible for holding together Arab power structures.²²² Sociologist Ali Al-Wardi distinguished Arabian Peninsular relations in terms of tension with geographic implications between sedentary (*badara*) and more dominant nomadic (*badawa*) social structures.²²³ Political Scientist Nazih Ayubi hybridized Al-Wardi's distinction to include peninsular political tribal associations that co-existed with the state.²²⁴ Such expressions of group solidarity operate well below the high political level that many strategists envision for the GCC.

Establishing the GCC as an effective security structure to harmonize the operability of regional security and defense systems, or to put it again on a wishful path of interdependent economic coordination overplays an eagerness for such integration among autocrats and yet unduly diminishes a capacity to informally set agendas among kith and kin. Despite familial and dynastic conflict, fundamental and mutual concerns remain. Although they contain five percent of the world's population, Arab countries endured one-fourth of the world's conflicts between 2010–2013 and eighteen percent of the world's conflicts between 1948–2014.²²⁵ Almost forty-five percent of all terrorist attacks occurred in Arab countries in 2014,²²⁶ contributing to an alarming Arab Gulf arms race that spent \$181 billion in 2014 alone.²²⁷ The perceived need to preserve a stage for discussion

²²² See generally Hanna Batatu, *Some Observations on the Social Roots of Syria's Ruling, Military Group and the Causes for its Dominance*, 35 MIDDLE EAST J. 331 (1981).

²²³ See NAZIH N. AYUBI, OVER-STATING THE ARAB STATE: POLITICS AND SOCIETY IN THE MIDDLE EAST 50 (2009); HALIM BARAKAT, THE ARAB WORLD: SOCIETY, CULTURE, AND STATE 49–50, 68 (1993) (discussing Al-Wardi); YOUSSEF H. ABOUL-ENEIN, IRAQ IN TURMOIL: HISTORICAL PERSPECTIVES OF DR. ALI AL-WARDI, FROM THE OTTOMAN EMPIRE TO KING FEISAL 3 (2012) (on Al-Wardi's interest in the social-psychological tension between tribes and towns and Iraqi character).

²²⁴ See AYUBI, *supra* note 223, at 51.

²²⁵ *Arab Human Development Report 2016*, U.N. DEV. PROGRAMME 175 (2016), <http://www.arab-hdr.org/reports/2016/english/AHDR2016En.pdf>.

²²⁶ *Id.* at 174.

²²⁷ Anthony H. Cordesman, *Losing in Every Direction: The Arab Game of Thrones*, CTR. STRATEGIC & INT'L STUD. (Jan. 30, 2018),

suggests the viability of a soft law forum in the Arabian Peninsula, within or without the structure of the GCC. Some form of soft law association will outdistance GCC detractors. It is noteworthy that throughout the duration of this embargo, “the largest and longest gas pipeline in the Middle East,” pumping two billion standard cubic feet per day of refined methane gas from Qatar’s Ras Laffan Industrial City to the UAE,²²⁸ has remained open and unaffected by the blockade. A purposeful intent to recapture a dwindling sense of *asabiyyah* may account less for this uninterrupted flow than the forty-nine percent interest in the pipeline company held by French and U.S. conglomerates.²²⁹ At a minimum, however, important common commercial interests suggest a continuing basis for quiet diplomacy and the means by which distracted major powers can facilitate de-escalation of tensions now before the ICJ.

IV. CONCLUSION

Ibn Khaldûn’s generational theory of dynastic decline charted the fractious, ineffective, and personalized quarrels that detract from organized growth models and contribute to political instability and regional upheaval. Despite “rapid economic growth” since 1990, labor

<https://www.csis.org/analysis/losing-every-direction-arab-game-thrones>. See also Anthony H. Cordesman & Michael Peacock, *Military Spending and Arms Sales in the Gulf: How the Arab Gulf States Now Dominate the Changes in the Military Balance*, CTR. STRATEGIC & INT’L STUD. 4, 5 (Apr. 28, 2015), https://csis-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/150428_gulfarmssales.pdf (noting massive Arab Gulf state expenditures but little else to ensure “interoperability, common training,” and integrated facilities).

²²⁸ *Subsea Export Pipeline*, DOLPHIN ENERGY, <http://www.dolphinenergy.com/operations> (detailing the 48-inch, 364-kilometer subsea export pipeline with a design capacity to 3.2 billion scf/day) (last visited Sept. 23, 2018).

²²⁹ The pipeline, part of Dolphin Energy’s gas project, cost \$6.2 billion to build. The Mubadala Development Company, formed by the Government of Abu Dhabi, owns 51 percent of Dolphin Energy, with the French conglomerate, Total, and the U.S.-based Occidental Petroleum owning 24.5 percent each. *About Us*, DOLPHIN ENERGY, <http://www.dolphinenergy.com/about> (last visited Dec. 16, 2018).

productivity in the Gulf State region continues to decline.²³⁰ The challenge for a new generation of Gulf leaders will be to break the inertial bond of rentier development that impedes labor productivity and entrepreneurialism,²³¹ and restore the diminished sense of *asabîyah* that now results in dynastic factionalism.

Qatar has unique advantages. It has a \$320 billion sovereign wealth fund.²³² It owns more assets in London than the Queen of England, about ten percent of the Empire State Building, Paris's Saint-Germain Football Club, and numerous other global holdings.²³³ It is "the world's biggest producer of liquefied natural gas" ("LNG"),²³⁴ controls thirty percent of this world market,²³⁵ and dominates the Asia-Pacific trade, "the world's largest LNG-importing region."²³⁶ Qatar

²³⁰ *Arab Human Development Report 2016*, *supra* note 225, at 80.

²³¹ *Id.* at 79. See also Steffen Hertog, *The Private Sector and Reform in the Gulf Cooperation Council*, LONDON SCH. ECON. & POL. SCI. KUWAIT PROGRAMME NO. 30 2 (2013), https://eprints.lse.ac.uk/54398/1/Hertog_2013.pdf (noting that "GCC capitalists remain an appendix to the state").

²³² Mohammed Sergie, *Qatar to Curb Transfers to Its Sovereign Fund Until 2022*, BLOOMBERG (Mar. 14, 2018, 9:00 AM), <https://www.bloomberg.com/news/articles/2018-03-14/qatar-says-to-curb-transfers-to-its-sovereign-fund-until-2022>.

²³³ See Uptin Saïidi, *Qatar Boasts Massive Global Holdings—Here Are Some of its Headline Assets*, CNBC (July 3, 2017, 10:03 PM), <https://www.cnbc.com/2017/07/03/qatar-boasts-massive-global-holdings--here-are-some-of-its-headline-assets.html>. See also Peter Beaumont, *How Qatar Is Taking On the World*, GUARDIAN (July 7, 2012), <https://www.theguardian.com/world/2012/jul/07/qatar-takes-on-the-world> (noting Qatar's principal ownership of western Europe's tallest building (London's Shard), Harrod's department store, and Barclays Bank, among other ventures).

²³⁴ Sergie, *supra* note 232. Qatar pulled out of the Organization of Petroleum Exporting Countries ("OPEC") on January 1, 2019, claiming it wanted to focus on natural gas production. Bill Chappel, *Qatar Will Pull Out of OPEC, As Rift With Saudi Arabia Deepens*, NPR (Dec. 3, 2018), <https://www.npr.org/2018/12/03/672839704/qatar-will-pull-out-of-opec-as-rift-with-saudi-arabia-deepens> (announcing the pull out).

²³⁵ Frank A. Verrastro & Jon B. Alterman, *Qatar Crisis: Turmoil in the GCC*, CTR. STRATEGIC & INT'L STUD. (June 14, 2017), <https://www.csis.org/analysis/qatar-crisis-turmoil-gcc>.

²³⁶ John Calabrese, *Global LNG Markets in a State of Flux: Qatar in the Crosshairs?* MIDDLE EAST INST. (Dec. 12, 2017), <http://www.mei.edu/content/map/global-lng-markets-state-flux-qatar-crosshairs>.

shares the world's largest gas field with Iran,²³⁷ which necessarily implies the need to manage a relationship worth potentially trillions of dollars.²³⁸ Additionally, Qatar insures against a breakdown in that relationship by subsidizing²³⁹ and hosting the largest U.S. airbase in the Middle East,²⁴⁰ which provides Qatar with much needed security insurance against Iran and increasingly, Saudi Arabia, given its supreme disadvantage: less than fifteen percent of Qatar's population of 2.7 million are nationals.²⁴¹

With so few citizens and so much wealth, Qatar easily insulates its domestic population from the popular movements that have disrupted the Arab street. A change in Saudi Arabia's succession plan witnessed on June 21, 2017 the Saudi king's appointment of his son, Mohammed bin Salman as crown prince, replacing the king's nephew, Mohammed bin Nayef as heir apparent to the throne. Machinations involving that power consolidation,²⁴² Saudi Arabia's badly progressing

²³⁷ Robin M. Mills, *The World's Biggest Gas Field Lies Between Qatar and Iran—and the Race is on*, BUSINESSDAY (July 20, 2017), <https://www.businesslive.co.za/bd/opinion/2017-07-20-the-worlds-biggest-gas-field-lies-between-qatar-and-iran--and-the-race-is-on/>.

²³⁸ See Harrison Jacobs, *The 17 Countries Sitting on the Most Valuable Energy Reserves*, BUS. INSIDER (AUSTL.) (Feb. 14, 2014, 3:53 AM), <https://www.businessinsider.com.au/countries-with-most-energy-reserves-2014-2#8-qatar-11> (detailing Qatar's 885.1 trillion cubic feet of proven natural gas reserves at an estimated future value at current prices of \$16.4 trillion).

²³⁹ See Paul McLeary, *Can Trump Find a Better Deal Than the U.S. Air Base in Qatar?* FOREIGN POLY (July 20, 2017, 12:23 PM), <https://foreignpolicy.com/2017/07/20/can-trump-find-a-better-deal-than-the-u-s-air-base-in-qatar/> (noting subsidized operation costs at Al Udeid air base).

²⁴⁰ See Niall McCarthy, *Where U.S. Troops Are in The Middle East [Infographic]*, FORBES (June 7, 2017, 8:25 AM), <https://www.forbes.com/sites/niallmccarthy/2017/06/07/qatar-hosts-largest-u-s-base-in-the-middle-east-despite-allegedly-funding-extremism-infographic/#25e05503dc7e> (calling the base the largest in the Middle East).

²⁴¹ *Qatar Population 2018*, WORLD POPULATION REV., <http://worldpopulationreview.com/countries/qatar-population/> (last visited Sept. 23, 2018). On Qatar's "evasive pretense" of not releasing indigenous population data to "hide the small size of [its] national population," see Onn Winckler, *How Many Qatari Nationals Are There?* 22 MIDDLE E. Q. (Mar. 1, 2015), <https://www.meforum.org/articles/2015/how-many-qatari-nationals-are-there>.

²⁴² See Dexter Filkins, *A Saudi Prince's Quest to Remake the Middle East*, NEW YORKER (Apr. 9, 2018), <https://www.newyorker.com/magazine/2018/04/09/a>

war in Yemen, a distracted if not inconsistent U.S. foreign policy in the region,²⁴³ which may have contributed to Secretary of State Tillerson's abrupt departure,²⁴⁴ forestall coordinated action and occlude consideration of the intramural peninsular rivalries that have long turned the region into a game of thrones.²⁴⁵ Such distractions contribute to forms of ceremonial profanation that, on the one hand threaten to turn Qatar into an island through construction of a moat, and on the other hand seek an aspirational judicial resolution at the ICJ. Such are the choices produced on a public stage.

As dysfunctional as the situation may appear, the most likely means of restoring at least a modicum *asabiyah* would be to remove the dispute from the center stage of peninsular politics, which poses a zero-sum solution for Qatar and Saudi Arabia/UAE. Despite the sounding death-knell of the GCC, movements off the political and juridical center stage appear to be taking shape. Qatar should have good reason to choose a softer route, unless it senses the generational demise of the House of Al Saud is approaching.

saudi-princes-quest-to-remake-the-middle-east (detailing Mohammed bin Salman's "messy battle over succession to the throne, which American security officials warned might destabilize the kingdom."); Josh Lederman & Dennis Romero, *CIA Concludes Saudi Crown Prince Mohammed bin Salman Ordered Killing of Khashoggi*, NBC NEWS (Nov. 17, 2018), <https://www.nbcnews.com/news/us-news/cia-concludes-saudi-crown-prince-mohammed-bin-salman-ordered-killing-n937476> (reporting that the CIA concluded with "high confidence" that the Saudi Crown Prince ordered the killing of a journalist critic of the regime).

²⁴³ See Russell A. Berman, *Saudi Arabia or Iran in US Strategy*, HOOVER INST. (June 19, 2018), <https://www.hoover.org/research/saudi-arabia-or-iran-us-strategy> (noting the preoccupation with major and shifting strategic differences between the Obama and Trump administrations involving the Joint Comprehensive Plan of Action, more familiarly dubbed the "Iran Deal").

²⁴⁴ See Emmons, *supra* note 74.

²⁴⁵ See Mohammed Alyahya, *The Rift with Qatar as Seen in Riyadh*, ATLANTIC COUNCIL (June 13, 2017), <http://www.atlanticcouncil.org/blogs/menasource/the-rift-with-qatar-as-seen-in-riyadh> (on disruptions and deceits in the Qatari royal family dating to Sheikh Khalifa bin Hamad's overthrow of his cousin in 1972. Hamad was then overthrown by his son, Hamad bin Khalifa al-Thani in 1995, who began to take a more independent tack until pressured by Saudi Arabia to abdicate the emirship to his son, Tamim in 2013, who, in turn, is viewed with suspicion by Saudi Arabia and its allies).