



IN-DEPTH

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The Changing Aeropolitical Landscape in the Gulf

Some Legal & Risk Management Considerations

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The aviation sector has historically occupied a pivotal role in the economic and social development agenda of Gulf Cooperation Council (GCC) countries,¹ contributing to the internationalization of the region in the fields of finance, transport and logistics, real estate, education, sports, and tourism. Once used by foreign airlines as a hub for technical stops to refuel long-haul flights between Europe and Asia, the GCC has emerged as one of the most innovative regions in global aviation in recent decades, setting new standards in airport infrastructure, airline product development and customer service delivery. Over the years, GCC-based airlines have also become important clients for U.S. and European aircraft manufacturers – Boeing and Airbus – and key providers of air connectivity between underserved markets in developing regions of the world,² thus turning their aviation sector into a formidable tool of diplomacy and influence – both regionally and globally.

This article analyzes the aeropolitical significance of the newly-established Doha Flight Information Region (Doha FIR) by the International Civil Aviation Organization (ICAO) Council in March 2022 and the commitments made by GCC countries under the Al-Ula Declaration of January 2021, both within the context of the competitive landscape for aviation in the region. Despite the implementation of some mitigation measures and the creation of formal channels for bilateral engagement, sanctions and countermeasures are still relatively easy to re-introduce in case of future political disagreements. Governments and companies involved in the region could

benefit from integrating aeropolitical and legal considerations into their own risk management and planning processes.

Establishment of the Doha Flight Information Region

Until recently, the management of Qatar's air navigation services within its sovereign airspace was delegated to neighbouring Bahrain, based on the provisions set out in the Memorandum of Understanding (MoU) signed by both countries on April 24, 2000. This rare occurrence was brought to light in June 2017, after Bahrain and UAE decided to restrict Qatar-registered aircraft from accessing their respective Flight Information Regions (FIRs) as part of the suite of sanctions and countermeasures³ that resulted from Qatar's alleged non-compliance with the Riyadh Agreements of 2013 and 2014.⁴

In March 2022, and despite reservations conveyed by some states including neighbouring Bahrain, the ICAO Council agreed to proceed with the proposal to delineate a specific airspace under Qatar's control⁵, based on a two-phased approach to establish the Doha Flight Information Region or Doha FIR. As illustrated in the figure below, the dimensions of the new Doha FIR will cover all economic waters and land of Qatar, in addition to international waters east of Qatar up and until the border with the UAE FIR, and international

1 As of June 2022, GCC Member States are Saudi Arabia, UAE, Qatar, Bahrain, Oman, and Kuwait. Further information available at: <https://www.gcc-sg.org/en-us/AboutGCC/MemberStates/Pages/Home.aspx>

2 Especially in Africa, Middle East, Caucasus, South and Southeast Asia.

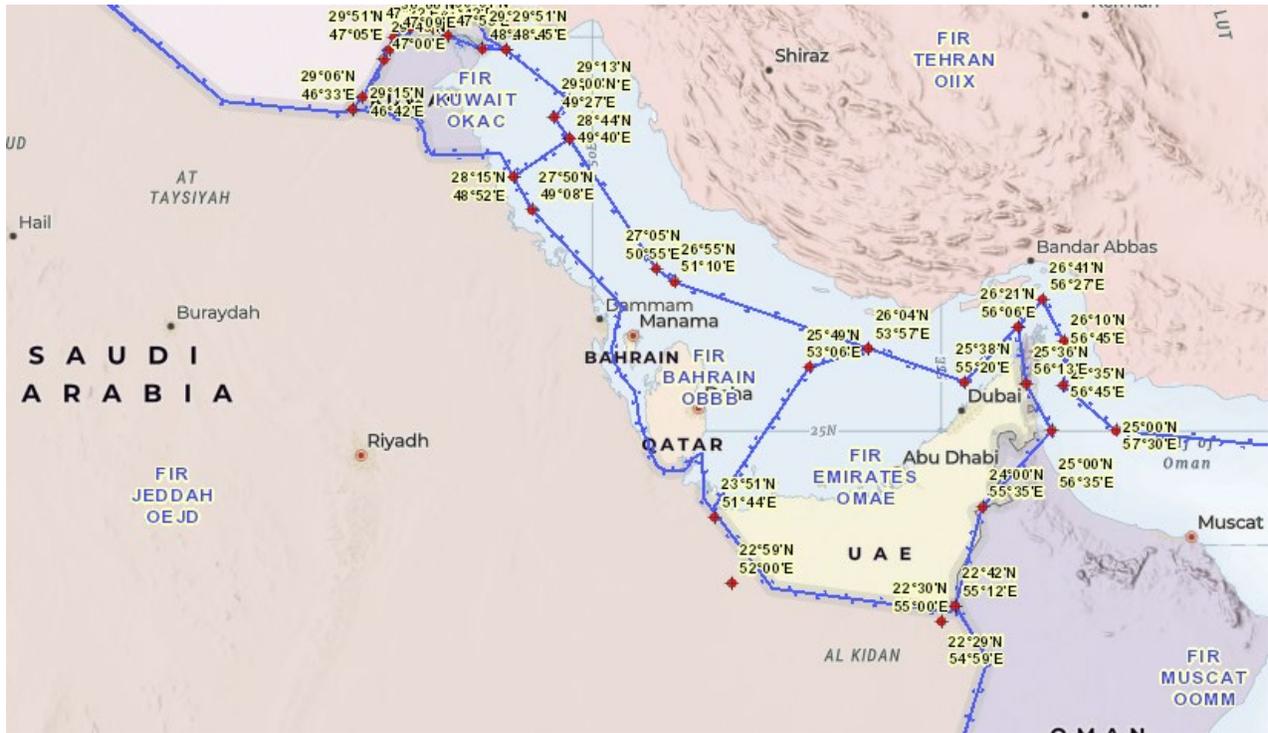
3 See particularly, *Preliminary Objections of the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Saudi Arabia, and the United Arab Emirates*, in Re Application (A) of the State of Qatar relating to the Disagreement Arising under the Convention on International Civil Aviation done at Chicago on 7 December 1944 (19 March 2018).

4 See particularly, *Mechanism Implementing the Riyadh Agreements* (April 17, 2014), available at: <https://treaties.un.org/doc/Publication/UNTS/No%20Volume/55378/A-55378-0800000280527eaf.pdf>

5 Decision during the 10th meeting of its 225th session held on Friday March 11, 2022.



Figure 1.1 — Flight Information Regions in the Gulf – June 2017



Source: ICAO ArcGIS

waters north of Qatar until the border with the Tehran FIR (i.e., both Areas “A” and “B”).⁶

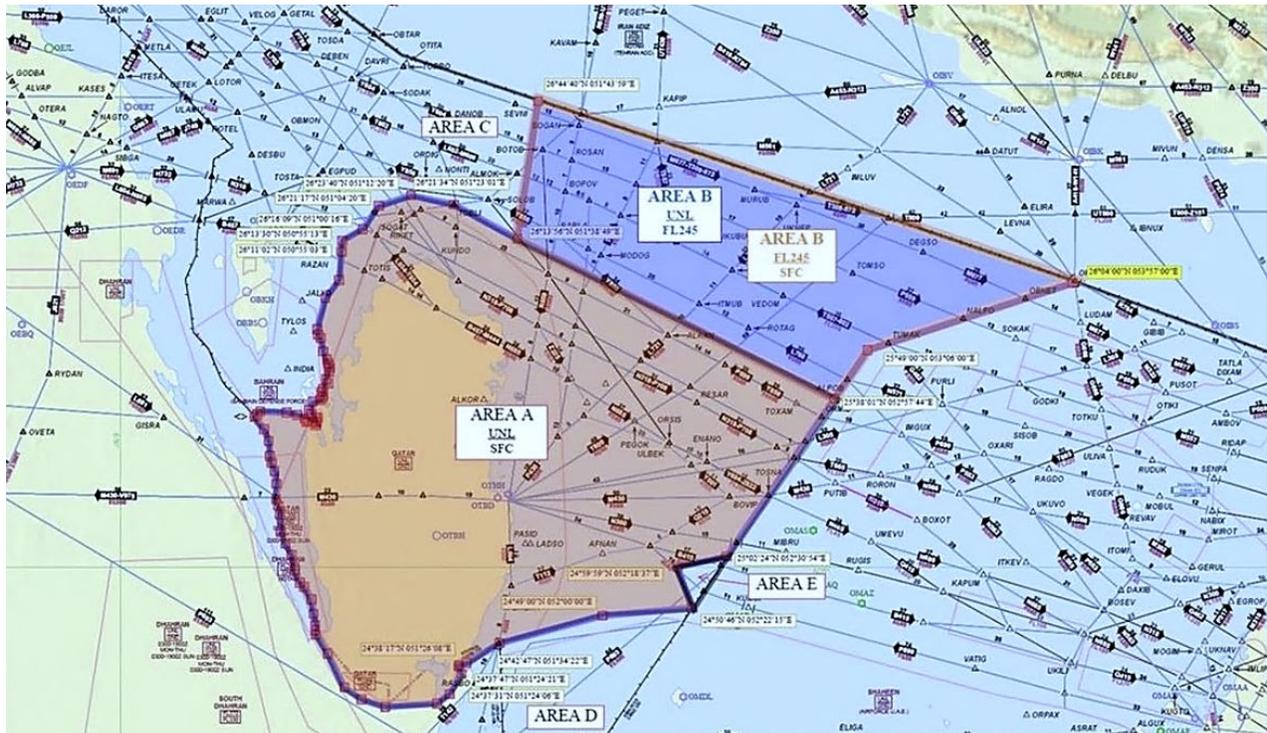
Within two years, and subject to successful implementation of the first phase – which requires Qatar to prove that navigation systems and infrastructure are effectively in place to support the safe and efficient flow of air traffic within designated Areas “A” and “B”, including implementation of technical arrangements with Bahrain to address the newly-reduced airspace under its management – the Doha FIR will be fully established. The expected transition from phase 1 to phase 2 is set for November or December 2022.

The establishment of the Doha FIR is an effective mitigation measure that can provide greater operational and commercial certainty to Qatar’s national airline – Qatar Airways – in case new sanctions or countermeasures seeking to weaponize its surrounding airspace are ever attempted by its neighbours. At the same time, the long-term significance of the Doha FIR deserves to be contextualized within the commitments made in the Al-Ula Declaration of 2021.

6 Qatar Civil Aviation Authority, “ICAO Council Agrees on Establishment of Doha FIR in New Civil Aviation Achievement” (March 27, 2022), available at: <https://www.caa.gov.qa/en-us/News/Pages/ICAO-Council-Agrees-on-Establishment-of-Doha-FIR-in-New-Civil-Aviation-Achievement.aspx>



Figure 1-2 — Doha FIR/SRR Outline – Council 225th Session



Source: Qatar Civil Aviation Authority

Significance of the Al-Ula Declaration for Aviation Relations

On January 5, 2021, leaders of the GCC – including Egypt – signed the Al-Ula Declaration⁷ during the 41st GCC Summit, effectively putting an end to the diplomatic and economic measures launched against Qatar on June 5, 2017, which also included a full blockade of land, shipping, and airspace routes. In accordance with the commitments made in Section II of the Al-Ula Declaration, proceedings at the level of the International Civil Aviation Organization (ICAO), the World Trade Organization (WTO), and the International Court of Justice (ICJ) were subsequently withdrawn, including parallel investor-state arbitration

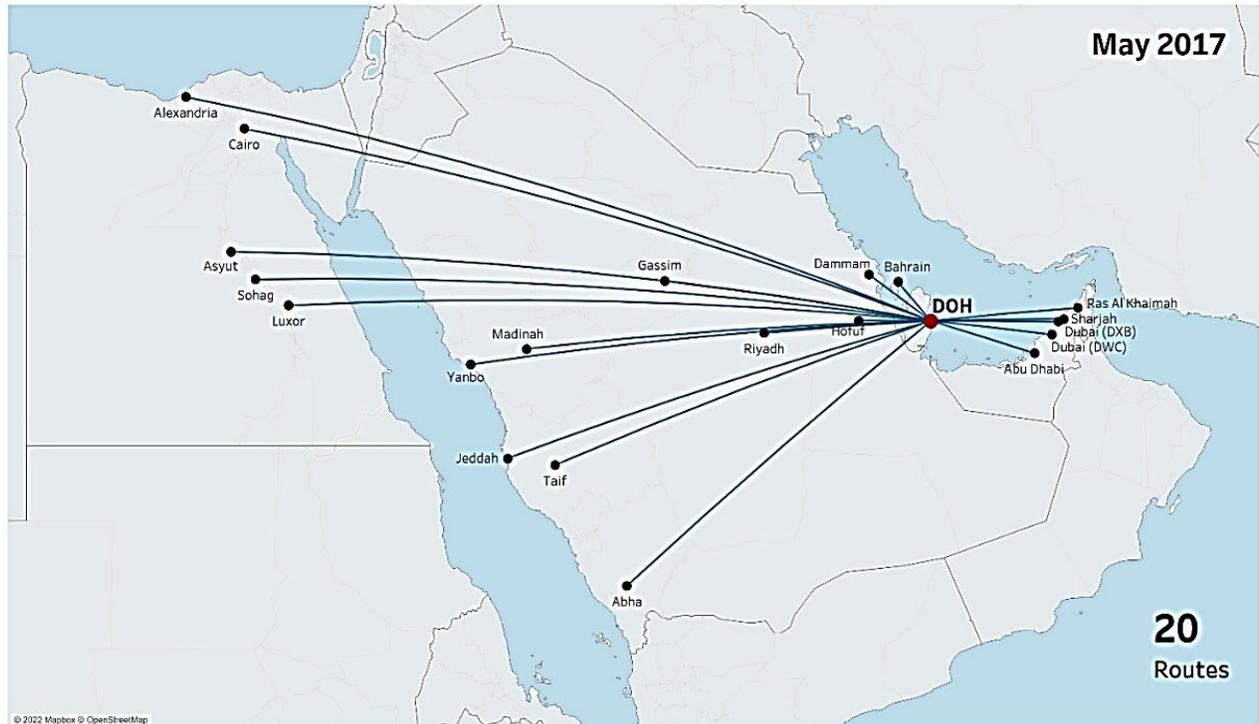
cases launched by Qatar-based entities to obtain financial compensation for the damages caused by the forced disruption.

Air and travel links have also resumed between signatory States in recent months. The land border between Qatar and Saudi Arabia – the Salwa crossing – opened officially on January 9, 2021, and the first commercial flight between Doha and Riyadh (QR1164) was operated by Qatar Airways on January 11, 2021. The resumption of direct flights between Qatar’s national capital – Doha – and the other four signatory States to the Al-Ula Declaration have reduced travel times and contributed to the gradual normalization of business relations that were interrupted on June 5, 2017. As shown in the maps below, only 55% of the routes operated pre-June 2017 have been recovered as of May 2022.

⁷ *Al-Ula Declaration* (5 January 2021), registered with the Secretariat of the United Nations on July 1, 2021, and done on October 26, 2021. Available at: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002805b2870>



Figure 1.3 — Air Travel Links to/from Doha to Saudi Arabia, UAE, Bahrain, Egypt (before June 2017 and after January 2021)



Source: Innovata Schedules via Diio Mi



Some Observations on the Al-Ula Declaration: Opportunities and Risks Ahead

In its preamble, the Al-Ula Declaration calls for joint action and cooperation in accordance with the principles of international law, relevant agreements, conventions, and resolutions, as well as the established principles in the Charter of the United Nations, the Charter of the Arab League, and the Charter of the Gulf Cooperation Council.

One of the key undertakings made by signatory States relates to the protection of their national sovereignty – although affirmed with a certain level of vagueness in Section I: “States parties to the present Declaration (...) stand in solidarity in ensuring that none of them shall in any way suffer its sovereignty to be encroached upon”. It is not clear whether this undertaking creates a positive obligation on signatory States to protect each other or whether this commitment could also potentially cover attempts to violate national sovereignty among GCC members.

The Al-Ula Declaration also discourages any confrontation that could undermine the national or regional security, including detrimental actions to the national kinship or social fabric of their nationals. Presumably in an effort to address some of the demands submitted to Qatar in 2017,⁸

⁸ Thirteen (13) demands were presented to Qatar by Saudi Arabia, UAE, Bahrain, and Egypt in June 2017, namely: (1) Curb diplomatic ties with Iran, including any joint military cooperation and ensure compliance with US and international sanctions against Iran, (2) Sever all ties with organizations designated as terrorists – specifically the Muslim Brotherhood, ISIS, Al-Qaida, Hezbollah – including formally declaring those entities as terrorist, (3) Shut down Al-Jazeera and its affiliate stations, (4) Shut down news outlets funded by Qatar such as Arabi21, Al Araby Al Jadeed, and Middle East Eye, (5) Terminate Turkish military presence in Qatar and end any joint military cooperation with Turkey, (6) Stop all means of funding for individuals, groups, or organizations that have been designated as terrorists by Saudi Arabia, the UAE, Bahrain, Egypt, the United States, and other countries, (7) Hand over terrorist figures and wanted individuals from Saudi Ara-

signatory States confirmed their commitment to unite against any direct or indirect interference in their internal affairs, as well as to engage in joint cooperation to combat terrorist entities, movements, and organizations, or any actors that may threaten their security or stability.

Interestingly, and despite the multilateral framework provided by the GCC Charter, the chosen mechanism to resolve disputes and differences among signatory States is bilateral discussions, supported by the establishment of two committees, one to address follow-ups and the other to discuss legal matters, and both with a focus on addressing outstanding political and security issues and monitor progress on the commitments of the Al-Ula Declaration. As no additional safeguards to prevent escalation were introduced, coercive diplomacy in the form of new sanctions on commercial aviation remains possible if bilateral discussions were to fail at some point in the future.

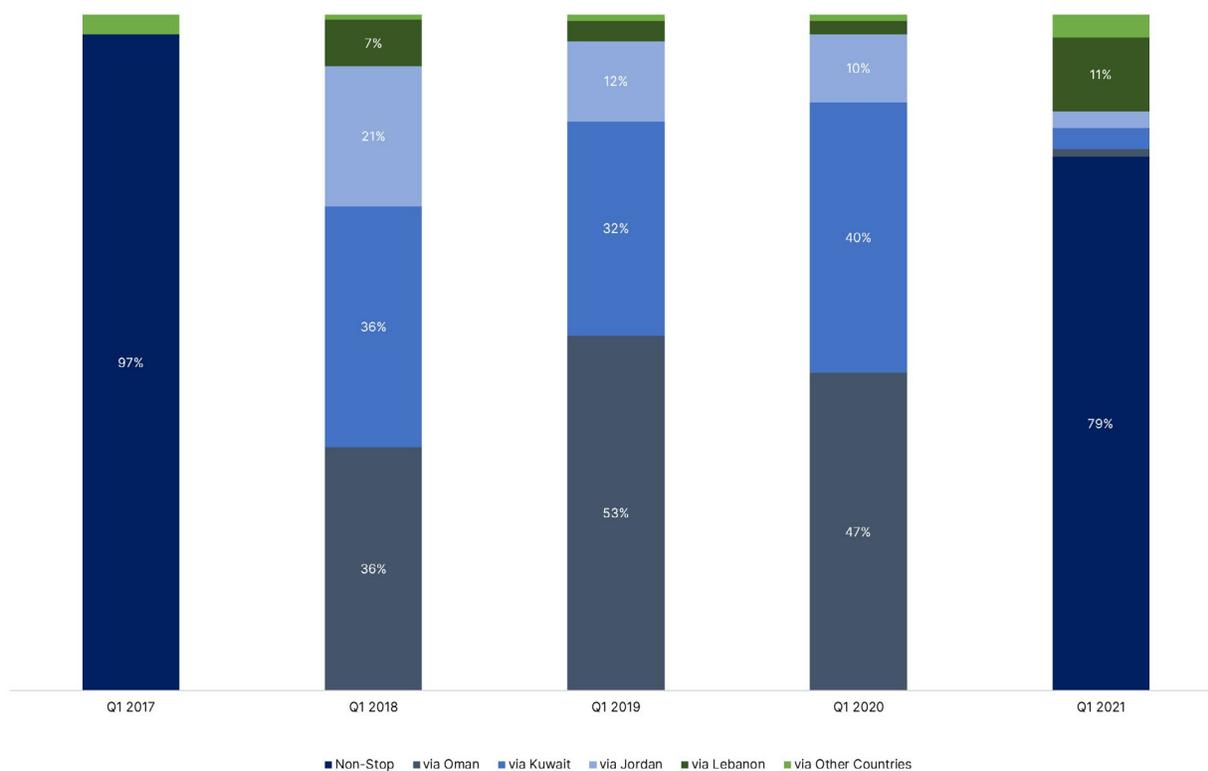
The Effects of Coercive Diplomacy: Aeropolitical, Commercial, Financial and Legal

Bahrain-controlled airspace will decrease in the coming months and Qatar is expected to

bia, the UA, Bahrain, and Egypt to their countries of origin, including freezing their assets and providing information about their residency and movements, (8) End interference in sovereign countries’ internal affairs, for example: stop granting citizenship to wanted nationals from Saudi Arabia, the UAE, Bahrain, and Egypt, (9) Stop all contacts with the political opposition in Saudi Arabia, the UAE, Bahrain, and Egypt, (10) Pay reparations and compensation for loss of life and other financial losses caused by Qatar’s policies in recent years, (11) Align with other Gulf and Arab countries militarily, politically, socially, and economically – in line with the Agreement reached with Saudi Arabia in 2014, (12) Agree with all the demands within 10 days after submission to Qatar or the list becomes invalid, and (13) Consent to monthly audits for the first year after agreeing to the demands, once per quarter during the second year, and annually for the following 10 years.



Figure 1.4 — Air Passenger Traffic Flows from Qatar to Saudi Arabia, UAE, Bahrain, Egypt (By Itinerary, 2017-2021)



Source: Sabre Global Demand Database

manage a greater flow of international air traffic in the region – including on routes to/from the UAE – thus creating a deterrent effect on any countermeasures that would seek to encroach on Qatar’s sovereign airspace in the future. On the other hand, Saudi Arabia has not yet signed the International Air Services Transit Agreement⁹ – an international treaty whereby States grant each other the right to overfly across their territory and the privilege to land for non-traffic purposes – thus confirming the Kingdom’s approach to use its airspace and the resulting overflight rights as diplomatic and economic assets during

⁹ *International Air Services Transit Agreement*, (ICAO Doc. 7500), signed in Chicago on December 7, 1944, available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%2084/volume-84-II-252-English.pdf>

international negotiations.

In case of conflict, Saudi Arabia’s approach could pose certain operational and commercial risks for its neighbours – Qatar and Bahrain in particular, and to a lesser extent the UAE – whose national airlines depend largely on overflight rights over Saudi territory, especially for African and South American routes. As an example, Qatar Airways’ flight from Doha to Khartoum (QR1323) currently takes 3 hours and 30 minutes. From June 2017 to January 2021, the same flight could take up to 6 hours, affecting the commercial and financial viability of Qatar Airways’ operations to/from Sudan, and ultimately forcing the airline out of the Doha-Khartoum market.

Another factor to consider is the impact of



sanctions and countermeasures on the regional competitive landscape and its effects on existing and/or future commercial arrangements between GCC-based airlines. For example, prior to June 2017, nearly all air passengers travelling from Qatar to either Saudi Arabia, the UAE, Bahrain, or Egypt did so on non-stop flights (97%). Following the introduction of airspace restrictions, travellers were displaced onto longer connecting itineraries via other countries – notably benefiting airports and airlines in Oman, Kuwait, and Jordan, and resulting in higher operational costs for Qatar Airways.

Aeropolitical shifts affect the law and economics of a wide array of commercial agreements in aviation, especially with entities based in countries perceived as high-risk from a geostrategic standpoint. Coercive diplomacy may also create unintended effects on existing commercial cooperative agreements as sanctions could sometimes contain extra-territorial elements.

As the tectonic plates of geopolitics continue to shift in unknown directions, it is reasonable to expect that incidents of weaponization of the airspace, including aviation-specific sanctions will become more prevalent, testing the ability of international and regional organizations to provide adequate and effective dispute resolution mechanisms. This is particularly problematic in instances when affected parties – i.e., airlines, airports, investment banks, pension funds, among others – end up incurring massive losses as a result of coercive diplomatic measures, yet they possess no remedies to suspend such measures while the merits of the case are being heard.¹⁰

The total cost of airspace restrictions on Qatar Airways has been estimated at \$5 billion USD, a figure that includes investment-related losses,

10 For example, through injunction reliefs or temporary orders.

loss of profitable routes, increased operating costs due to longer routes, and overflight fees, among others.¹¹ Similar costs could be incurred by other airlines if a new diplomatic confrontation erupts between GCC members. Most importantly, the introduction of airspace prohibitions, which in practice result in the suspension of commercial and operational rights granted under existing bilateral aviation treaties, could also (potentially) result in the termination of aviation relations between the Parties involved.¹²

Conclusion

As signatory Parties to the Al-Ula Declaration continue to discuss joint mechanisms and procedures for implementing their commitments¹³, the risk of potential escalation in case of disagreement on issues related to terrorism, internal GCC security, or national sovereignty remains a possibility. The bilateral approach favoured in the Al-Ula Declaration can be a two-edged sword. On one side, it can facilitate the focused resolution of differences on the basis of orderly and itemized negotiations by limiting the number of overlapping issues and coalition-building strategies that typically affect multilateral fora. On the other, it can fragment the political landscape of the GCC by opening up

11 “Qatar Airways seeks \$5 billion compensation from Arab bloc over airspace ban” (July 22, 2020), available at: <https://www.reuters.com/article/us-gulf-qatar-qatar-airways-idUSKCN24N1F9>

12 Article 60 of the *Vienna Convention on the Law of Treaties*, done at Vienna on May 23, 1969, entered into force on January 27, 1980, provides that “A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.” Available at: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

13 The National, “UAE and Qatar meet for Al-Ula Declaration Follow-Up” (February 10, 2022), at: <https://www.thenationalnews.com/uae/2022/02/10/uae-and-qatar-meet-for-alula-declaration-follow-up/>



the door to the politics of good intentions, where parties continuously issue general statements without real progress on their commitments.

The tone of diplomatic détente observed during the 42nd GCC Summit held in December 2021 is an encouraging step in the right direction, and so is the newly-announced Match Day Shuttle Service agreed between Qatar Airways and airlines from Saudi Arabia, UAE, Oman, and Kuwait¹⁴, which aims to alleviate logistical and accommodation pressure on Qatar organizers and allow neighbouring GCC countries to also benefit from the upcoming 2022 FIFA World Cup.

In the meantime, the uncertainty around geopolitical realignments at a global scale and how these may affect the GCC is compounded by the competition landscape for aviation in the region, which has been historically based on aggressive competition to capture international air traffic, particularly by Qatar and the UAE, and to a lesser extent Bahrain, Oman, and Kuwait. With a recently announced National Aviation Sector Strategy and massive investments in airport infrastructure¹⁵, Saudi Arabia – the only GCC country with a sizable domestic market and a favourable competitive position on religious routes – seems determined to play a bigger role in GCC aviation.

In contrast with other leading aviation regions such as the European Union, Canada/U.S. in North America, or the Association of Southeast Asian Nations (ASEAN) – GCC countries have not yet agreed on an open skies policy that would grant unlimited market access rights to designated

GCC airlines and provide opportunities for greater intra-GCC connectivity. For now, internal competition to capture international air traffic flows is expected to remain, providing an opportunity to GCC-based airlines and airports to reduce their aeropolitical risks through a strategy of commercial engagement with non-GCC entities. The conclusion of comprehensive air transport agreements with the European Union by both Qatar¹⁶ and Oman¹⁷ is a case in point.

As the roadmap for implementation of the Al-Ula Declaration remains uncertain, the lack of adequate and effective mechanisms to settle aviation disputes resulting from coercive diplomacy is another risk that should not be underestimated. Those involved in aviation can benefit from integrating some of the considerations discussed above in their own risk management and planning processes. Some questions that should be addressed going forward: how can aeropolitical and legal risk analysis be integrated into decision-making processes and how to reduce exposure and limit damages if any of the risks identified materializes. Scenario analyses have rightly been identified as useful means to navigate uncertainty and mitigate risks¹⁸; however, a thorough understanding of the aeropolitical culture and legal frameworks pertaining to aviation in a specific region can provide insights on how government action and companies' preferences may be conditioned, framed, or influenced.

14 "Gulf Airlines to operate shuttle flights for Qatar 2022 World Cup", (May 26, 2020), available at: <https://www.aljazeera.com/news/2022/5/26/gulf-airlines-to-operate-shuttle-flights-for-qatar-2022-world-cup>

15 "Saudi Arabia Announces the Launch of the Future Aviation Forum next May in Riyadh" (March 28, 2022), available at: <https://www.spa.gov.sa/viewfullstory.php?lang=en&newsid=2341419>

16 "Aviation: EU and Qatar sign Landmark Aviation Agreement" (October 18, 2021), available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5344

17 "Aviation: EU and the Sultanate of Oman initial Aviation Agreement" (December 1, 2021), available at: https://transport.ec.europa.eu/news/aviation-eu-and-sultanate-oman-initial-aviation-agreement-2021-12-01_en

18 Ian Bremmer & Preston Keat, *The Fat Tail: The Power of Political Knowledge for Strategic Investing*, Oxford University Press, 2009, at pp. 23-36.

About the Author

Marcelo Garcia is Senior Director at InterVISTAS Consulting, based in Vancouver, and a graduate of McGill's Institute of Air & Space Law (LL.M.). Previously based in Doha, Qatar, he has advised on a variety of market access and global regulatory issues, including regional airspace disputes, commercial agreements, and bilateral air negotiations in the Caucasus, Central and South Asia, and Japan. He was an advisor to the Qatar negotiating team that secured a comprehensive air transport agreement with the European Union in 2019 – tackling historically contentious issues such as fair competition, environmental protection, and labour – and a landmark agreement with the U.S. government on the issue of subsidies and financial transparency. He has also advised Canada's Minister of Transport on the competition aspects of airline joint ventures, foreign ownership limits, wet leasing, and airports' governance. He was also nominated as Canada's alternate representative to ICAO's Air Transportation Regulation Panel (ATRP) in 2013. The views expressed herein are exclusively those of the author, and do not reflect the views, positions, or opinions of his current employer or any individual, governmental or corporate entities associated with the author.

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