

Legal consequences of the “missed” extradition of Yandarbiyev

Replies and Comments:

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Focus

Declaration of the Minister of Foreign Affairs of the Russian Federation 26 February 2004

<http://www.ln.mid.ru/bl.nsf/new/21FE7F759742740EC3256E460030FDD0> (in Russian)

Vienna Convention on Consular Relations 24 April 1963

Article 36(1)(b)

“if [the national] so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner.”

Resolution 1373 (2001) Security Council

Decides also that all States shall:
“(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;
(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;”

On 26 February 2004 Qatar informed the Russian government that three of its citizens had been arrested on the charge of the murder of Mr. Zelimkhan Yandarbiyev, a Chechen separatist guerrilla leader. Mr. Yandarbiyev was Chechnya’s acting president in 1996-1997 and had been living in Qatar since 2000. Despite repeated requests from the Russian authorities to surrender Mr. Yandarbiyev, Qatar refused to extradite him. On 13 February 2004 Mr. Yandarbiyev died from the consequences of wounds he suffered after his car exploded. Russia has, however, denied any involvement in the death of Mr. Yandarbiyev.

Mr. Igor Ivanov, Russia’s Ministry of Foreign Affairs, made a solemn declaration on 26 February 2004, accusing Qatar of violating international law.

First, Mr. Ivanov declared that the three Russian citizens (one of them, holding a diplomatic passport, was later released), who belonged to the anti-terrorist unit of the Russian embassy, were solely gathering and analysing information relating to international terrorism. In this regard, Mr. Ivanov stressed that Qatar was under the duty to inform the Russian authorities as soon as the suspects were arrested. Moreover the Qatari authorities, so Mr. Ivanov alleged, refused the suspects access to their embassy for about seven days. According to article 36(1) of the Vienna Convention on Consular Relations (to which Qatar is a State Party since 1998) and the jurisprudence of the ICJ in the 2001 *LaGrand* case, the State that detains foreign nationals must inform these individuals without delay of their right to communicate with consular officials. Hence, one of the first questions raised is whether Qatar informed the three Russians of their right. In addition, if a foreign national requests consular assistance, law enforcement officials are required to notify the consulate and facilitate communication. As members of the Russian embassy, one may presume that the three detained individuals were aware of their right to contact their consulate and probably requested the Qatari authorities to communicate with consular officers. By refusing to permit the Russians to speak to the consular authorities, Qatar appears to have violated a basic norm of international law.

The second point raised by Mr. Ivanov is that Qatar, by allowing Mr. Yandarbiyev to live on its territory, breached international law and, in particular, several UN resolutions. In his words, not only did Qatar fail its obligation to fight international terrorism but it also offered sanctuary to Mr. Yandarbiyev. In fact, Mr. Yandarbiyev was considered as a key link in the Chechen rebel’s finance network, channeling funds from abroad; more specifically, he was accused of having ties to the individuals who organised the Moscow hostage crisis in 2002. According to the list drawn by the UN Counter-Terrorism Committee in pursuance of Security Council Resolutions 1267 (1999) and 1333 (2000), Mr. Yandarbiyev was deemed to have links with the Al Qaeda network.

Mr. Ivanov accuses Qatar of failing to abide by the rule set by the UN Security Council that all States are compelled to either bring to justice or surrender terrorists to the country where they committed their crimes. This is specially provided in Resolution 1456 (2003) that calls upon States to “bring to justice those who finance, plan, support or commit terrorist acts [...], in accordance with international law, in particular on the basis of the principle to extradite or prosecute”.

Furthermore, one may legitimately point out that Qatar harboured a terrorist and, consequently, violated several UN resolutions. For example, paragraph 1 of Resolution 1526 (2004) clearly spells out that States are obliged to prevent the entry into or the transit through their territories of the individuals referred to on the list. No doubt it also means that States are prohibited from offering shelter to terrorists, a position that is supported by numerous resolutions, amongst others resolution 1373 (2001) that has binding force as it was passed under Chapter VII of the UN Charter.

Consequently it appears that the comments made by Mr. Ivanov are far from being devoid of international legal basis. Yet, should the Russian authorities be involved in the killing of Mr. Yandarbiyev, Qatar’s violation of the norms of international law does not endow Russia with the right to self-help in contravention of other international norms. This again raises the issue of the legality of targeted killings (see Bofaxe 265).

Responsibility

BOFAXEs are published by the Institute for International Law of Peace and Humanitarian Law of the Ruhr-University Bochum: IFHV, NA 02/33 Ruhr-Universität Bochum, 44780 Bochum. Tel: 0049234/3227366, Fax: 0049234/3214208.

BOFAXEs are supported by the German Red Cross. **The writer is solely responsible for the content.**