

Legal Analysis of the Demands Presented to Qatar

George R.A. Doumar, Raj Patel,
and Michael J. Smith
Doumar Martin PLLC

June 26, 2017



Arab Center Washington DC
المركز العربي واشنطن دي سي

I. Introduction

On June 23, 2017, Kuwait, acting as a mediator, presented Qatar with a thirteen-point list of demands on behalf of Saudi Arabia, Bahrain, United Arab Emirates, and Egypt. The demands were the purported price for lifting a trade and diplomatic embargo imposed by these countries on Qatar on June 5, 2017. According to the terms presented, in order for the embargo to be lifted, these demands must be met within ten days. Our analysis reviews the legal basis, or lack thereof, for these demands.

II. Analysis

Demand 1: Curb diplomatic ties with Iran

The Vienna Convention on Diplomatic Relations (1961), to which Saudi Arabia is a party, provides that each receiving and sending state control their diplomatic relations by “mutual consent.” See Article 2. A sending state and receiving state each are empowered to control and accredit foreign diplomats as they see fit. See Articles 5, 9. Any request to curb ties with Iran has no basis under international law.

Demands 3, 4, & 5: Sever all ties to “terrorist organizations” and stop all means of funding for individuals, groups, or organizations that have been designated terrorists

Qatar employs a framework to combat terrorism both within its borders and globally, specifically in regards to preventing financing for terrorism. Each nation has its own such

designated lists and the lists of certain countries are different.

Qatar is a member of the Middle East North Africa Financial Action Task Force, a Financial Action Task Force (FATF)-style regional body. The Government of Qatar routinely engages with international interlocutors on terrorist financing and has taken steps to improve oversight of foreign charities that receive contributions from Qatari institutions and to work with the banking sector to identify suspicious transactions.

Qatar’s Combating Money Laundering and Terrorist Financing Law of 2010 requires Qatar’s Public Prosecutor to freeze the funds of terrorist organizations designated by the U.N. Security Council, and the government distributes lists of U.N.-designated terrorist entities and individuals to financial institutions. Formally, Qatar’s Ministry of Labor and Social Affairs monitors and licenses nongovernmental charitable organizations and requires that Qatari organizations’ foreign partners submit to a vetting and licensing process before receiving Qatari funds. The Qatari government in the past has ordered Qatari institutions to cut ties with certain foreign charities over concerns about their activities. See 2013 U.S. Department of State Country Reports (<https://www.state.gov/j/ct/rls/crt/2013/224823.htm>).

Demands 6 & 11: Shut down Al-Jazeera and news outlets that Qatar funds

By demanding that Qatar shut down Al-Jazeera, as well as other news outlets that it funds directly or indirectly, the Saudi government has defied international law as codified by the U.N. General Assembly. In U.N. Resolution A/Res/36/103 (1981), the U.N. declared that a State has the right to non-interference from other States in its internal and external affairs, which includes "the right of States and peoples to have free access to information and to develop fully, without interference, their system of information and mass media and to use their information media in order to promote their political, social, economic and cultural interests and aspirations" U.N. Resolution A/Res/36/103 (9 December 1981).

More recently, in September 2016, the United Nations Human Rights Council passed Resolution HRC 33/33/L.6 regarding the safety of journalists. This resolution condemns all attacks and violence against journalists, which includes "intimidation, threats and harassment, including through attacks on or the forced closure of their offices and media outlets, in both conflict and non-conflict situations." The resolution also urges States "to ensure accountability through the conduct of impartial, thorough, independent, and effective investigations into all alleged violence, threats and attacks against journalists and media workers falling within their jurisdiction." The Resolution further calls upon States "to create and maintain, in law and in practice, a safe and

enabling environment for journalists to perform their work independently and without undue interference."

The United Nations has also declared May 3rd as "World Press Freedom Day" and on that day last month, António Guterres, the U.N. Secretary-General said, "On World Press Freedom Day, I call for an end to all crackdowns against journalists - because a free press advances peace and justice for all."

Accordingly, Qatar, under customary international law and the dictates of the United Nations, must respect press outlets, and cannot summarily shut down such institutions.

Demand 2: Terminate Turkish Military Presence

On or around June 6, 2017, the Pentagon renewed its praise of Qatar for hosting a vital U.S. air base and for its "enduring commitment to regional security." <https://www.reuters.com/article/us-gulf-qatar-usa-pentagon-idUSKBN18X2G2>. More than 11,000 U.S. and coalition forces are deployed to or assigned to al Udeid Air Base, from which more than 100 aircraft operate under a status of forces agreement. Of those 11,000, nearly 1,000 work in a combined air operations center that helps oversee missions for campaigns in Iraq, Syria, and Afghanistan. Similarly, Turkey, a NATO member, and Qatar have entered a status of forces agreement, whereby Turkish troops will be stationed in Qatar. At present, there are less than 100 Turkish troops in Qatar. Turkey's military presence in Qatar, like the United States'

military presence, depends on an agreement entered into by mutual consent relying on their sovereign rights.

Qatar cannot unilaterally cancel its binding agreements under international law, whether with Turkey, the United States or other countries.

Demand 7: End interference in sovereign countries' internal affairs. Stop granting citizenship to wanted nationals from Saudi Arabia, the UAE, Egypt and Bahrain. Revoke Qatari citizenship for existing nationals where such citizenship violates those countries' laws.

Article 15 of the Universal Declaration of Human Rights (UDHR) states “[e]veryone has the right to a nationality” and that “[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.” The UDHR represents customary international law.

Qatar’s constitution echoes the foregoing, and permits individuals, specifically political refugees, to seek asylum in Qatar. Qatar’s constitution, Part. 3, Article 58 states that “extradition of political refugees is prohibited; and the laws shall determine conditions of granting political asylum.” Furthermore, the Arab Charter on Human Rights, Article 23, states that “every citizen shall have the right to seek political asylum in other countries in order to escape persecution. This right shall not be enjoyed by persons facing prosecution for an offence under the ordinary law. Political refugees shall not be extraditable.”

The 1951 Refugee Convention and 1967 Optional Protocol also prohibit forcible repatriation without due process.

Without due process, Qatari citizens (or foreign citizens with residence rights in Qatar) cannot be divested of their citizenship, both under international law and the Qatari constitution.

Demand 10: Stop all contacts with the political opposition in Saudi Arabia, the UAE, Egypt and Bahrain

Qatar is a sovereign country with the rights and responsibilities, as a body politic, to engage in international relations with other communities, as set forth in the Vienna Convention on Diplomatic Relations (1961). Saudi Arabia’s remedies thereunder include declaring a particular diplomat persona non-grata. See Article 9. There is no basis for such a broad request of ceasing all contacts with the political opposition in four countries under international law.

If Saudi Arabia perceived a threat from a sovereign state, its recourse under international law is to raise a complaint at the United Nations. Articles 33-35 of the U.N. Charter require negotiation of disputes, and require states to pursue mediation and then bring a dispute to the Security Council if needed.

The United Nations International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations on 16 December 1966, confirms that free human beings enjoying freedom from fear and want

“can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.”

Qatar, as a sovereign nation, cannot simply cease all contacts with political dissidents, without itself being in violation of international norms. Saudi Arabia’s directive also violates international law as reflected in the documents cited above.

Although Saudi Arabia has no authority to prohibit Qatar, a sovereign nation, from talking to different persons, Saudi Arabia has full authority under the Vienna convention non Diplomatic Relations to expel Qatari diplomats, and also potentially seek extradition under legal procedures against persons who have committed crimes.

Demand 8: Pay reparations and compensation for loss of life and other, financial losses caused by Qatar’s policies

Qatar is a sovereign country and subject to the rights and privileges afforded to States, including sovereign immunity. Article 5 of The United Nations Convention on Jurisdictional Immunity of States and Their Property (“U.N. Jurisdictional Immunity Convention”) states that: “A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State.” Article 6 states that “A State shall give effect to State immunity under article 5 by refraining from exercising jurisdiction in a proceeding before its courts against another State and to that end shall

ensure that its courts determine on their own initiative that the immunity of that other State under article 5 is respected.”

Article 12 of the U.N. Jurisdictional Immunity convention allows any State to claim immunity from jurisdiction before a court of another State in a proceeding which relates to pecuniary compensation for death or injury to the person, or damage to or loss of tangible property, caused by an act or omission which is alleged to be attributable to the State, UNLESS the act or omission occurred in whole or in part in the territory of that other State AND if the author of the act or omission was present in that territory at the time of the act or omission.

Saudi Arabia, under the U.N. Charter, may seek authority from the U.N. Security Council to seek compensation, for example as a result of an armed attack or other transgression, but there is no authority under international or any other law to seek compensation for “policies.”

Demand 13: Consent to audits

Again, Qatar is a sovereign country and subject to the rights and privileges afforded to States, including sovereign immunity. Article 5 of The United Nations Convention on Jurisdictional Immunity of States and Their Property (“U.N. Jurisdictional Immunity Convention”) states that: “A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State.” There is no basis for auditing another state under any international convention. Unlike some member

states of the GCC, Qatar published an Open Data Policy in November 2014. This policy confirms the commitment of the Qatari government to Open Government, and specifies that “The Open Data Policy will institute specific actions to ensure all of [Qatar’s] Government Agencies will take steps to expand public access to government data by making it available online unless restricted by law, policy, regulations or contract.” Further auditing or disclosure is illegal, as well as unnecessary.

Demand 9: Align itself with the other Gulf and Arab countries militarily, politically, socially and economically

Article 2 of the U.N. Charter confirms that “[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.” See Article 2, Section 7 of the U.N. Charter.

Qatar, as a sovereign nation, has the right to set its own military, political, social, and economic agenda, free from interference by every other country. While no international law forbids one country from requesting another to align with its national agenda, such an alliance is inappropriate if a product of force.

Pursuant to the Cato Institute’s Human Freedom Index, for example, Qatar is one of the GCC’s leaders in supporting its constituent’s personal and economic freedoms. See The

Human Freedom Index 2016, available at <https://object.cato.org/sites/cato.org/files/human-freedom-index-files/human-freedom-index-2016.pdf>. Qatar should not be forced to copy the less tolerant political, social, and economic agendas of other Gulf states.

Also, the Gulf Cooperation Council (“GCC”), through its Supreme Council, and Ministerial Council, has a regular mechanism to address disputes between members and goals of the GCC. Article 10 of the GCC Charter calls for the creation of “The Commission for the Settlement of Disputes,” which is attached to the Supreme Council. At the least, in addition to all other points noted above, Saudi Arabia should utilize the GCC framework.

Demand 12: Agree to all the demands within ten (10) days of it being submitted to Qatar, or the list becomes invalid

Even if the Qatari government were inclined to accede to the demands set forth on this list, a ten-day period in which to comply is impossible given the complexities inherent in and due process required for what would be a major shift in its domestic legal standards and international policy.

III. Conclusion

A preliminary analysis of this list demonstrates that there is no legal basis for the demands that have been presented on behalf of Saudi Arabia. On the contrary, compliance with the list of demands would require the Qatari government to violate basic due process rights and act in

contravention of U.N. resolutions and customary international law, and would also significantly infringe on Qatar's sovereign rights as an independent nation. The manner in

which the demands were issued also bypasses the GCC Charter, as well as the U.N. charter, both of which provide specific procedures to address disputes between member nation

For more analysis visit arabcenterdc.org

