

OPINION No. 30/1999 (NIGERIA)

Communication addressed to the Government on 30 June 1998

Concerning Volodymyr Timchenko, Alexander Shulgin, Anatolyi Tyrkin, Vadim Nefedov and 19 other Ukrainian crew members of the Dubai Valour

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group regrets that the Government has not replied within the 90-day deadline.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
  - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
  - (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. The communication, a summary of which has been transmitted to the Government, concerns, according to the source, Volodymyr Timchenko, a Ukrainian national, born on 9 June 1958, radio officer on the M/V Dubai Valour, domiciled in Ukraine (Kerson region) at 76 Sovetskaya Street in Golozerka, and 22 other members of the crew on board the Dubai Valour at the time of the incident.

6. The case concerns the seizure of a cargo vessel, the Dubai Valour, and the forcible retention on board the vessel of its entire crew at Sapele, Nigeria, since August 1997. The vessel was carrying second-hand oil rig drilling parts from India to Nigeria. During a storm, part of the cargo loaded on the deck of the vessel was lost overboard; the terms of the bill of lading included the clause "part cargo laded on deck at shipper's risk".

7. Upon completion of the unloading of the cargo in Nigeria on 8 August 1997, the cargo's receivers, Lonestar Nigeria, impounded the ship against a claim equivalent to US\$ 17 million, although an expert on oil drilling equipment had put the total value of the claim at only US\$ 170,000.

8. Although the ship's owner hired local lawyers and various attempts were made to bring the matter before the local courts, these efforts were frustrated by the claimants. On 22 August 1997, the Federal High Court in Lagos ordered the ship released against a letter of undertaking in the amount of US\$ 1 million. This letter was provided, but the ship was unable to leave port owing to difficulties encountered with local agents appointed by Lonestar.

9. Then, the Area Naval Commander refused to accept the release order; in addition, the Nigerian Port Authority advised that it had received a letter from Lonestar stating that the ship should not be allowed to leave port. The shipowners' lawyer requested the Naval Chief of Staff and the Chief Judge of the Federal High Court to intervene, but to no avail.

10. In early September 1997, representatives of the claimants, in cooperation with military personnel, were reported to have boarded the ship and attempted to move it forcibly to an unsafe location. On 9 September 1997, the claimants obtained a court order requiring the ship to be moved to that location. The ship was eventually permitted to leave the unsafe berth, but when it moved downriver, it was fired on by armed men in boats. The captain thereupon stopped the ship. On 24 September 1997, according to the source, a substantial group of military personnel boarded the ship and forced the captain to take it to a location in the port of Sapele next to the claimants' offices, which was also unsafe as it was too small. On 30 September 1997, the High Court order releasing the ship was stayed, upon application by the claimants.

11. According to the source, the owners of the ship are concerned about the safety of the crew owing to the continued presence of military personnel on board the ship and the removal of the ship's papers. In mid-October 1997, the owners sent a representative to Nigeria to negotiate the ship's release and to meet with the claimants and the owner of Lonestar, Chief Humphrey Idisi. The negotiations did not take place. The owners then met with two Lonestar representatives in London who expressed willingness to accept a settlement equivalent to the replacement cost of the lost parts, plus US\$ 3.5 million to cover alleged consequential losses. But as Lonestar could not produce any evidence to substantiate its claim, the owners declined to settle on that basis.

12. The source expresses concern at the situation of the crew who have been on board the vessel for over 11 months, 9 of them in Sapele, and that their health and safety conditions are deteriorating. For that reason, the owners' legal representatives in Nigeria appealed to the local court under the Fundamental Human Rights (Enforcement) Proceedings, in a suit on behalf of all

the members of the crew against the Attorney-General of Nigeria, the Controller of Immigration, the Minister for Internal Affairs, Lonestar Drilling Co. Ltd. and its owner. No progress has allegedly been made as the court hearings have been repeatedly postponed.

13. In the spring of 1998, the source indicates, further negotiations between the shipowners and Lonestar were organized in Switzerland. They were aborted, as Lonestar indicated that it would no longer accept a settlement of US\$ 3.5 million and asked for US\$ 5 million instead. The owners, realizing that no progress would be made on the cargo claim, focused on the question of the repatriation of the crew. Lonestar indicated that the crew would not be permitted to repatriate.

14. The source contends that the judicial system of Nigeria is being continuously abused by Lonestar and its owner, Chief Idisi, and that every attempt to secure the release of the crew through the local courts has failed; the options available to the owners are now seriously reduced. It is further said to be a violation of basic human rights that 23 individuals were confined to a ship for more than nine months because of a commercial dispute.

15. In a submission of 19 February 1999, the source notes that the majority of the sailors (apparently 19) had been released on an unspecified date. Only Volodymyr Timchenko, Alexander Shulgin, Chief Officer Anatolyi Tyrkin and Chief Engineer Vadim Nefedov continue to be detained aboard the Dubai Valour.

16. Although no reply has been received from the Government, the Working Group notes that the source has produced a number of documents issued by Nigerian authorities the authenticity of which cannot be disputed. The documents confirm that the allegations of arbitrary deprivation of liberty - in this case on board a ship - are well founded; several judgements, notably from the Nigerian Federal High Court in Lagos, requested the local authorities, including the area Chief Inspector of Police, to take steps to ensure that the party concerned could appear without hindrance before the court, but to no avail.

17. In its decision of 19 June 1998, the High Court considered in particular that the seizure and withholding of the applicants' international passports and travel documents by the Immigration Service were a gross breach of the fundamental rights of the applicants to freedom of movement, as guaranteed under Order Section 31 (1) and of the Constitution of the Federal Republic of Nigeria of 1979, and of the right to leave Nigeria as guaranteed under article 5 of the African Charter on Human and Peoples' Rights.

18. In the light of the above, the Working Group:

(a) Is pleased to note that the country's highest judicial authority considers the detention of Volodymyr Timchenko and the other crew members on board the Dubai Valour to be arbitrary;

(b) Considers that the deprivation of liberty of these persons on board ship by a non-State group does not absolve the Government of its responsibilities, in that it has been established, *inter alia* by the affidavits produced by the source, that the authorities knowingly tolerate this illegal situation and, further, refuse to carry out the court injunctions to release Volodymyr Timchenko and the other three crew members still in detention;

(c) Considers the detention of Volodymyr Timchenko and the other crew members still detained on board ship to be arbitrary in that - as established by the Federal High Court of Justice - it lacks any legal basis and thereby violates article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, to which Nigeria is a party, and falls within category I of the principles applicable to the consideration of cases submitted to the Working Group;

(d) Also considers the detention of the 19 other crew members to be arbitrary as regards the period of their detention on board the Dubai Valour and likewise to fall within category I of the principles applicable to the consideration of cases submitted to the Working Group for the period in question.

19. Having declared arbitrary the deprivation of liberty imposed upon Volodymyr Timchenko, Alexander Shulgin, Anatolyi Tyrkin and Vadim Nefedov and on the 19 other crew members during the period they were kept on board the ship, the Working Group requests the Government to take the necessary steps to remedy the situation, in particular by implementing the court judgements, so as to bring it into conformity with the principles incorporated in the Universal Declaration of Human Rights (art. 9) and with articles 9 and 14 of the International Covenant on Civil and Political Rights, to which Nigeria is a party.

Adopted on 30 November 1999