

**OPINION No. 3/2001 (INDONESIA)**

Communication addressed to the Government on 7 August 2000

Concerning Mr. Shauket Ali Akhtar and the members of the crew of the Kota Indah

The State has not ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolutions 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.
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 case, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. On 19 February 1999, the Kota Indah, a Singaporean vessel owned by Pacific International Lines (PIL), was towed into Surabaya inner harbour, Indonesia, and anchored under the guidance of the harbour pilot and with the approval of the port control. According to the vessel's harbour chart, the mooring area was not an area in which anchoring is prohibited.

6. Subsequently, the vessel's bridgemaster, Captain Shaukat Ali Akhtar, informed Surabaya port control that the vessel had dragged its anchor for a distance of approximately 460 metres. Thereafter, under the guidance of port control, the vessel's engines were used and the starboard anchor was heaved up, then again dropped for a short period.

7. On 21 February 1999, the police detained six members of the crew of the Kota Indah, Captain Shaukat Ali Akhtar, Mr. Daniel Attah-Gyasi, Mr. Krustiono Basuki, Mr. Miladin Vucetic, Mr. Zhang Chang You and Mr. Johny Erumbanath Antony. The authorities reportedly detained them for 60 days, without any charges.

8. PT Perusahaan Listrik Negara Company (PT PLN), a local power company and owner of the submarine Gresik-Madura Power Cable, brought a civil law suit against Pacific International Lines (PTE) Ltd. PT PLN alleged that the underwater power cable which went across the seabed of Surabaya harbour in the vicinity of the mooring space of the Kota Indah had been damaged by its anchor when the ship was adrift. On 14 June 2000, the Court of First Instance of Surabaya unanimously dismissed PT PLN's claim and declared that there was no evidence that the ship's crew had committed any intentional negligence.

9. According to the source, the Public Prosecutor has to date not submitted any formal charges in a parallel criminal case reportedly brought against the crew members. The crew members are not allowed to leave Indonesia and continue under city arrest (i.e. they are confined to Surabaya). Lastly, it was said that under normal circumstances an incident of this type should be settled through the civil courts and the ship's crew should not have been detained for such a long period.

10. Instruments relied upon by the Working Group in the examination of communications brought to its attention have been violated. This concerns in particular article 9 of the Universal Declaration of Human Rights.

11. The Working Group points out that the source formulates two different allegations concerning the unlawful and arbitrary deprivation of liberty to which six crew members of the Kota Indah were subjected, which deserve to be examined separately.

- (i) First, it was contended that the six crew members were detained on 21 February 1999 by police officers and kept in detention for a period of 60 days without any charge. The Public Prosecutor brought no charge against them subsequent to their release from police custody.
- (ii) Second, it was alleged that the crew members were not allowed to leave Indonesia and were confined to Surabaya.

12. With regard to the arrest of the six crew members and their detention in police custody, the Working Group points out that this was a clear case of deprivation of liberty. The six members of the crew, Mr. Shaukat Ali Akhtar, Mr. Daniel Attah-Gyasi, Mr. Krustiono Basuki, Mr. Miladin Vucetic, Mr. Zhang Chang You and Mr. Johny Erumbanath Antony were all held in police custody, locked up permanently for 60 days without any warrant of arrest having been issued against them.

13. With regard to their being prevented from leaving Indonesia and their being confined to Surabaya City, the Working Group refers to its constant jurisprudence, formulated in clear terms in its Deliberation 1/1993, under which house arrest and similar measures are qualified as deprivation of liberty only if the person concerned is placed in closed and locked premises which he cannot leave without being authorized to do so. In the view of the Group, the measure taken against the six crew members of the Khota Indah preventing them from leaving Indonesia is not a measure of deprivation of liberty within the meaning of the mandate of the Working Group, but a measure which restricts freedom of movement within the meaning of article 13 of the Universal Declaration of Human Rights.

14. In the light of the foregoing, the Working Group renders the following opinion:

- (i) The arrest and detention for 60 days of six members of the crew of the vessel the Kota Indah are arbitrary since they are contrary to article 9 of the Universal Declaration of Human Rights and fall within category III of the principles applicable in the consideration of cases submitted to the Working Group.
- (ii) Since the measure taken in respect of the crew members of the Kota Indah preventing them from leaving Indonesia or the city of Surabaya does not fall into the category of deprivation of liberty, the Working Group does not deem necessary to take a position as to whether it was arbitrary or not.

15. The Working Group requests the Government to take the necessary steps to remedy the situation, to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and to avoid the occurrence of such practices in the future.

Adopted on 16 May 2001