

OPINION No. 5/2003 (UNITED STATES OF AMERICA)

Communication addressed to the Government on 8 January 2003.

Concerning: Mourad Benchellali, Khaled Ben Mustafa, Nizar Sassi and Hamed Abderrahaman Ahmed.

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

1. (Same text as paragraph 1 of opinion No. 15/2002.)
2. The Working Group regrets that the Government has not provided it with the requested information.
3. (Same text as paragraph 3 of opinion No. 15/2002.)
4. In the light of the allegations made, the Working Group deplores the lack of cooperation of the Government despite reiterated invitations by the Working Group to present its observations on the allegations of the source. The Working Group believes, nevertheless, that it is in a position to render an opinion on the facts and circumstances of the cases.
5. The communication submitted to the Working Group concerns Mourad Benchellali, Khaled Ben Mustafa, Nizar Sassi and Hamed Abderrahaman Ahmed:
 - (a) Mourad Benchellali, born in 1981, a French national, resident in Vénissieux, France, was reportedly arrested during the fall of 2001 during the United States-led intervention against the Taliban regime and al-Qua'idah organization in Afghanistan. He was allegedly arrested by Pakistani police or military forces in Pakistan, handed over to United States forces and then transferred to the United States military base in Guantánamo Bay;
 - (b) Khaled Ben Mustafa, born in 1972, a French national, resident in Malakoff, France, was reportedly captured during the fall of 2001 during the United States-led intervention in Afghanistan. He was reportedly arrested by United States forces at the border between Afghanistan and Pakistan, and transferred in January 2002 to Guantánamo Bay;
 - (c) Nizar Sassi, born in 1979, a French national, resident in Vénissieux, France, was also allegedly captured by United States forces in Afghanistan during the fall of 2001 and transferred to Guantánamo Bay;
 - (d) Hamed Aderrahaman Ahmed, born in 1974, a Spanish national, resident in Ceuta, Spain, was also reportedly arrested during the United States-led intervention in Afghanistan. He was allegedly arrested in Pakistan, handed over to United States forces and then transferred to Guantánamo Bay.

6. According to the information received, no charges have been brought against these four persons. They have not been able to consult or obtain legal assistance from an attorney, and have not been arraigned by a judge in a competent court. Furthermore, they have not been allowed any communication, except visits by representatives of the International Committee of the Red Cross (ICRC) and letters to their families via ICRC.

7. The source of the communication believes that international human rights law should be applied given that the Government has denied prisoner-of-war status and the application of the Geneva Conventions of 12 August 1949 to the persons captured during the intervention in Afghanistan and detained at Guantánamo Bay.

8. In conformity with paragraph 15 of its revised methods of work, the Chairman-Rapporteur of the Working Group, in a letter dated 8 January 2003, brought the communication to the attention of the Permanent Representative of the United States of America to the United Nations Office at Geneva. He invited the Government to provide any information it deemed appropriate both concerning the facts alleged by the source and the applicable legislation governing the arrest and detention of the above-mentioned persons. The deadline for reply, in conformity with the revised methods of work, was 90 days from the date of transmittal of the letter. Since neither was a reply provided nor a request for an extension of the 90-day time limit, on 10 April 2003 a note verbale was sent to the Permanent Mission of the United States advising it that at the thirty-sixth session of the Working Group, which would take place from 5 to 9 May 2003 in Geneva, the Working Group would consider the cases of detention of the above-mentioned persons. No reply to the note verbale was received.

9. Since its establishment in 1991, the constant endeavour of the Working Group has been to dispose of cases within its mandate through a dialogue conducted with both authors of individual communications and Governments. Such dialogue is particularly important in combating international terrorism in view of the sensitive issue of how to strike a fair balance between the interests of the international community and the restriction of individual rights and freedoms which, sometimes inevitably, accompanies the fight against terrorism (see, in this regard, the Working Group's legal opinion regarding the deprivation of liberty of persons detained in Guantánamo Bay, in E/CN.4/2003/8, paras. 61-64). It is for this reason that the Working Group deplores the Government's failure to make any observation whatsoever on the communication.

10. Despite the lack of information from the Government, the Working Group is duty bound to render an opinion. It must rely on the provision of paragraph 16 of its revised methods of work which stipulates that "... even if no reply has been received upon expiry of the time limit set, the Working Group may render an opinion on the basis of all the information it has obtained".

11. On the basis of the information provided by the source, which appears to the Working Group to be factually accurate and consistent, the Working Group cannot but conclude that there is no legal basis for the deprivation of liberty of Mourad Benchellali, Khaled Ben Mustafa, Nizar Sassi and Hamed Abderrahaman Ahmed.

12. In accordance with the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mourad Benchellali, Khaled Ben Mustafa, Nizar Sassi and Hamed Abderrahaman Ahmed is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, to which the United States of America is a party, and falls within category I of the categories applicable to the consideration of cases submitted to the Working Group.

13. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 8 May 2003