

**INTERNAL INQUIRY INTO THE ACTIONS OF CANADIAN
OFFICIALS IN RELATION TO
ABDULLAH ALMALKI, AHMAD ABOU-ELMAATI
AND MUAYYED NUREDDIN**

**OUTLINE OF SUBMISSIONS ON BEHALF OF MUAYYED NUREDDIN
CONCERNING STANDARDS OF CONDUCT**

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A) Introduction

1. The Government of Canada has established this Commission under Part One of the *Inquiries Act*, R.S.C., C. I-13 to determine:

- (i) whether the detention of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances;
- (ii) whether there were deficiencies in the actions taken by Canadian officials to provide consular services to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin while they were detained in Syria or Egypt; and
- (iii) whether any mistreatment of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances.

Terms of Reference (Order-in-Council P.C. 2006-1526), paras. a(i), (ii), (iii)

2. By Amended Notice of Hearing dated November 26, 2007, the Commissioner has requested submissions addressing five areas pertaining to the standards he should apply in determining these matters:

- 1) sharing of information by Canadian officials with foreign authorities;
- 2) questioning of Canadian citizens detained in foreign states;
- 3) provision of consular services to Canadian citizens detained in foreign states;
- 4) disclosure of information obtained by consular officials; and
- 5) the role of consular officials in national security or law enforcement matters.

3. Mr. Nureddin shares the concerns expressed by other participants as to the difficulty, in the absence of any established factual context, of making submissions that will assist the Commissioner in determining the matters set out in the Amended Notice of Hearing. The following submissions are thus limited to Mr. Nureddin's particular circumstances to the extent that they are a matter of public record. Mr. Nureddin requests the opportunity to make further submissions on these matters should a framework of proposed factual findings be disclosed by the Commission.

4. Mr. Nureddin also shares the concern expressed by Messrs. Almalki and El Maati as to the implication in the Amended Notice of Hearing that each of them could have been suspected on reasonable grounds of constituting threats to the security of Canada or were appropriate targets for criminal investigations into the possible commission of terrorism offences. That said, it is submitted that any labelling of Mr. Nureddin or the other men as a suspected Islamist terrorist or threat to national security by Canadian officials and the sharing of such suspicions with foreign agencies are highly germane to the Inquiry's mandate.

5. Mr. Nureddin adopts the submissions of Amnesty International, Human Rights Watch and the International Civil Liberties Monitoring Group regarding the legal framework within which the questions posed in the Amended Notice of Hearing should be answered.

6. Mr. Nureddin also adopts the submissions of Messrs. Almalki and El Maati to the extent that they apply to his particular circumstances.

B) Factual Background

1) Mr. Nureddin's Detention in Syria¹

7. Mr. Nureddin is a Canadian citizen. On September 16, 2003, he was booked to depart Pearson International Airport on a flight to Amsterdam. Mr. Nureddin was on his way to visit family in Iraq, his country of birth, and to conduct some business in the Middle East.

8. While waiting to board his flight, Mr. Nureddin was questioned by two men who identified themselves as officers of the Canadian Security Intelligence Service (CSIS). The questioning lasted for about 40 to 45 minutes. Among other things, Mr. Nureddin was asked about the amount of money he was taking with him, what it was for and whether he knew Subghat Allah Rasul, Hassan Farhat or Aly Hindy. Mr. Nureddin had been questioned by CSIS once before, in late 2000.

9. On December 11, 2003, Mr. Nureddin left Iraq to travel to Damascus, Syria, where he

¹ The following brief summary is drawn from the Chronology dated April 11, 2007,

was to catch his return flight home to Toronto on December 13, 2003. Upon attempting to enter Syria, Mr. Nureddin was detained at the border station. He was transferred to a local detention centre. The next day, he was transferred to the Palestine Branch of the Syrian Military Intelligence. At the Palestine Branch, Mr. Nureddin was held incommunicado, interrogated, tortured, and detained in inhumane conditions. He was questioned by Syrian officials about some of the same topics as the CSIS officers had questioned him about prior to his departure from Canada.

10. Mr. Nureddin was released on January 13, 2004, after 34 days in detention. He was met at the Palestine Branch by Leo Martel, Canadian consul in Syria, in the office of General Khalil. This was the first contact Mr. Nureddin had had with any representative of the Canadian Embassy.

11. Mr. Martel accompanied Mr. Nureddin on his flight home to Toronto on January 14/15, 2004. Prior to leaving Syria, Mr. Nureddin was questioned by Mr. Martel about his experiences in detention. He also met with the Canadian Ambassador.

2) Syria's Human Rights Record

12. At the time of Mr. Nureddin's travels, Syria had a well-established reputation for committing serious human rights abuses. These abuses have been documented, *inter alia*, in the annual reports on the state of human rights prepared by the U.S. State Department, Amnesty

International, Human Rights Watch and the Canadian Department of Foreign Affairs and International Trade.

13. Individuals detained in Syria for political or national security reasons were at particular risk of torture and other human rights abuses. The *Report of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar* found as follows:

The U.S. State Department also reported that prison conditions in Syria were poor and did not meet international standards for health and sanitation. Facilities for political or national security prisoners were generally worse than those for common criminals. In cases of political or national security offences, suspects might be detained incommunicado for long periods without charge or trial and without access to a lawyer. [. . .]

Amnesty International's 2002 report was similar to the U.S. State Department's reports, indicating that torture and ill-treatment continued to be used routinely against political prisoners in Syria, especially during incommunicado detention at the Palestine Branch and the Military Interrogation Branch detention centres.²

C) Sharing of information by Canadian officials with foreign authorities

14. For the reasons developed by Amnesty International in its submissions, Mr. Nureddin submits that under no circumstances ought Canadian officials to share information concerning Canadian citizens with foreign authorities when there are substantial grounds to believe that doing so may reasonably put those individuals at risk of torture or ill-treatment.

15. In particular, to share the suspicion that an individual is an Islamist terrorist or threat to

² *Report of the Events Relating to Maher Arar: Analysis and Recommendations*, p.180.

national security with a country like Syria (either directly or indirectly through a third country such as the United States), together with information about that individual's travel plans which would alert Syria to an opportunity to detain him, is to expose that individual to a risk of harm that is as undeniable and it is unacceptable. Exposure to such a risk is inconsistent with Canada's obligations under international human rights law and with Canadian domestic law, including the *Canadian Charter of Rights and Freedoms* and the *Criminal Code*. It is submitted that there is no circumstance in which it would be appropriate for Canadian officials to expose an individual to such a risk.

D) Questioning Canadian citizens detained in foreign states

16. For the reasons developed by Amnesty International in its submissions, Mr. Nureddin submits that under no circumstances ought Canadian officials engaged in national security or law enforcement matters to send questions, attend questioning by foreign authorities or directly question Canadian citizens detained in a foreign country such as Syria where there are substantial grounds to believe that that country engages in torture or other forms of ill-treatment of detainees.

E) Provision of consular services to Canadian citizens detained in foreign states

17. For the reasons developed by Amnesty International, Mr. Nureddin submits that Canadian consular officials should at all times be guided by their obligation to provide consular services to and defend the human rights of Canadian citizens detained abroad.

18. Fulfilling these obligations in a country like Syria, which holds individuals in incommunicado detention, will undoubtedly be a challenge. Consular officials should be prepared to act diligently on the basis of credible information concerning the “disappearance” of a Canadian citizen and to seek confirmation of that person’s whereabouts at the highest levels. Once located, every effort should be made to ensure that the individual is dealt with according to law and is treated in conformity with international human rights standards. Consular officials should always act in a manner that is judged, having regard to all of the circumstances, to be in the best interests of the individual in question.

Canada and Syria are signatories to the Vienna Convention on Consular Relations.³ As

such, Canada is entitled to request of Syria the right of consular access to any Canadian citizen detained there.

Article 36 (1) of the Vienna

Convention states:

With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he 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

³ 24 April 1963. UNTS 596, p.261. Entered into force 19 March 1967. Accession, Canada, 18 July 1974; Accession, Syria, 13 October 1978.

trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

19. The Vienna Convention obliges the detaining state to inform the detainee without delay of his or her rights under Article 36(1)(b). In the ideal case, the detainee would then be free to decide whether to request consular assistance or not. Conditions in a country like Syria, however, fall far short of the ideal. In such a place, it is most unlikely that the detainee will be informed of his or her rights. Moreover, even if the detainee was aware of these rights, there may be any number of reasons why the detainee would judge it not to be in his or her interest even to request consular assistance. It is submitted that the absence of a request for assistance should in no way relieve Canadian consular officials of their duty to assist.

F) Disclosure of information obtained by consular officials

20. The Arar Commission recommended that “Consular officials clearly advise detainees in foreign countries of the circumstances under which information obtained from the detainees may be shared with others outside the Consular Affairs Bureau, before any such information is obtained.”⁴ Mr. Nureddin respectfully adopts this view and the rationale for it articulated by the

⁴ *Report of the Events Relating to Maher Arar: Analysis and Recommendations,*

Arar Commission.

21. Mr. Nureddin submits, further, that this principle should apply not only while an individual is detained but also during any time after his or her release has been secured while consular officials continue to provide assistance.

22. As to the particular questions of how consular officials ought to conduct themselves, Mr. Nureddin joins Human Rights Watch in suggesting that this is an area in which expert evidence would be of assistance to the Commission.

G) Role of consular officials in national security or law enforcement matters

23. It is submitted that consular officials are obliged to act in the best interests of Canadian citizens abroad and to take measures to protect their fundamental human rights. This role is generally incompatible with their assisting Canadian officials who are engaged in law enforcement or intelligence gathering roles.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: December 19, 2007

“John Norris”

JOHN NORRIS

“Barbara Jackman”

BARBARA JACKMAN

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