

OPINION No. 7/1999 (INDIA)\*

Communication addressed to the Government on 2 June 1998

Concerning five Latvian pilots: Aleksander Klishin (commander); Oleg Gaidash (second pilot); Igor Moscvitin (navigator); Igor Timmerman (flight engineer); Yevgeny Antimenko (flight operator)

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 conveys its appreciation to the Government for having forwarded the requisite information in good time.
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 fully 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, by 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 relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial 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 welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source which did not comment on the Government's reply. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.
5. According to the source, the five pilots mentioned above were arrested in India in November 1995 and remained in custody at the prison of Calcutta, on charges of having delivered weapons to India and engaging in anti-State activity.

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\* Mr. Kapil Sibal did not participate in the deliberations on and the adoption of this Opinion.

6. Although the detained individuals argue that they were merely acting upon the orders of superiors, they continue to face the death penalty. The source submits that all five are subjected, in prison, to cruel and inhuman treatment, and that they are detained under conditions that do not comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

7. According to the source, who relies on the statements of defence counsel for the prisoners, the prisoners' rights under article 14 of the International Covenant on Civil and Political Rights have been violated. Thus, it is claimed that they were not given adequate time and facilities to prepare their defence, in violation of article 14, paragraph 3 (b), of the Covenant, and their right to be provided with the assistance of an interpreter (art. 14, para. 3 (f)) was equally violated. Other procedural guarantees under article 14 are also said to have been violated.

8. In its detailed reply, the Government refutes the allegations and provides the following version of the facts of the case:

(a) On 17 December 1995, at around 23.00 hours, an aircraft dropped a very large consignment of arms and ammunition in the area of Jhalda, in the district of Purulia, West Bengal State. On hearing of the incident, the police took action and recovered from the area AK-series rifles, pistols, empty magazines, ammunition, hand grenades, anti-tank grenades, etc.;

(b) The Central Bureau of Investigation (CBI) immediately commenced an investigation into the incident. Its inquiries revealed that a private AN-26 aircraft belonging to "Carol Air Services", which had flown from Karachi to Varanasi and then onward to Calcutta, was responsible for dropping the consignment. The aircraft had, in the meantime, left Indian territory for Thailand, instead of its original destination of Yangon. It however re-entered Indian territory and was intercepted by the Indian authorities. It was forced to make a landing at Bombay International Airport on the morning of 22 December 1995. The aircraft was seized by customs authorities and six foreign nationals on board the aircraft, including five Latvian nationals and one British national, were arrested by the police;

(c) Sufficient evidence has been discovered during the course of the investigation which clearly indicates the complicity of the five Latvian crew members in conspiring to air-drop arms and ammunition inside India. Investigation has proved beyond any doubt that without the full knowledge and complicity of the crew members, it would not have been possible for any person to air-drop the arms and ammunition inside Indian territory. The claims of innocence on the part of the Latvian crew members are therefore without any basis;

(d) The accused are receiving full legal assistance and there is constant liaison and interaction between them and their lawyers. There is no basis for the allegation that they do not have legal assistance;

(e) There has been no delay in the conduct of the investigation. A charge sheet was laid against 13 persons, including the Latvian crew members, as early as 27 March 1996, i.e. within exactly three months of the arrest of the accused persons. It may be mentioned that the accused, after submission of the charge sheets by the CBI, applied to different courts for bail. They also approached the Calcutta High Court as well as the Supreme Court of India. Because

of these applications pending in the higher courts, the trial could not start. The 4th City Sessions Judge framed the charges against the accused persons on 6 June 1997, after hearing prolonged arguments by the lawyers appearing on behalf of the accused. The accused then filed a petition before the High Court of Calcutta in August 1997, challenging the decision of the Sessions Judge. The matter came up in the High Court on many occasions and was finally disposed on 17 December 1997. The High Court upheld the charges framed by the 4th City Sessions Judge. The Supreme Court and the High Court have further directed that a speedy trial be conducted. However, due to filing of appeal petitions, revision petitions, etc. in different higher courts on various successive occasions, the trial has been further delayed;

(f) Qualified Russian interpreters have been available throughout the examination of the Latvian crew members during CBI custody. An interpreter was also arranged at the direction of the Judicial Court during court proceedings. The accused have not so far raised any objections to the use of documents in English nor made any request to the court for the translation of the documents into Russian. If they had submitted such a request, the court would have immediately acceded to the same. The allegation that they are not being provided the assistance of Russian translators is therefore without foundation;

(g) The investigation of the case shows that it has international ramifications and links to criminal activities in a number of places outside India. Inquiries are therefore being conducted with the help of Interpol. The assistance of technical experts specialized in civil aviation, forensic experts, ballistic experts, fingerprint experts, etc. is also being utilized to ensure that the investigation is conducted in a proper and efficient manner. Allegations that Indian experts have an inadequate understanding of the technicalities of civil aviation and that the Government is trying to save the real culprits at the cost of the accused are baseless and without any foundation. In any case, these are matters for the trial court to examine and decide upon.

9. The Government's reply was transmitted to the source for comments on 31 August 1998. To date, no observations from the source have been received.

10. In its communication, the source makes a number of allegations pertaining to ill-treatment of the five pilots. The alleged violations of the right to a fair trial only concern the allegedly insufficient time accorded to the pilots for the preparation of their defence, and the alleged absence of Russian interpreters.

11. The Working Group considers:

(a) That the first allegation is without basis, to the extent that the five pilots have always benefited from legal assistance (including, as transpires from the correspondence addressed to the Group, in the drafting of the present communication) and have interposed numerous appeals at all levels of the judicial system;

(b) That the allegation of lack of assistance of Russian interpreters is insufficiently substantiated. Indeed, the five pilots had the assistance of interpreters at the beginning of the inquiry, and subsequently did not object to the introduction and use of English documents; furthermore, they were assisted by an interpreter before the court.

12. As a result, the Group is in a position to render the following Opinion:

In the light of the procedural guarantees afforded to the five pilots, as explained above by the Government, and which have not been contested by the source, the Group declares not arbitrary the detention of Aleksander Klishhin, Oleg Gaidash, Igor Moscvitin, Igor Timmerman and Yevgeny Antimenko.

13. The Working Group wishes to recall that:

(a) On the one hand, the fact that a deprivation of liberty is declared not arbitrary does not imply any pronouncement on the guilt of the individuals deprived of their liberty; and

(b) On the other hand, given that the five pilots mentioned above may be subject to a capital verdict, the United Nations General Assembly has invited Member States to abolish capital punishment and, pending its abolition, to suspend its application.

Adopted on 20 May 1999