

OPINION No. 7/2001 (PEOPLE'S REPUBLIC OF CHINA)

Communication addressed to the Government on 26 April 2000

Concerning Tohti Tunyaz

The State has signed but 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 transmitted the above-mentioned communication to the Government.
2. The Working Group conveys its appreciation to the Government for having provided 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 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 welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and has received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. Mr. Tohti Tunyaz, a Chinese citizen born in 1959 and a doctoral candidate at the Graduate School of Humanities of the University of Tokyo specializing in the history of Chinese policy towards members of minority groups in the nineteenth and twentieth centuries, was visiting Urumchi, on 6 February 1998, for the purpose of collecting source material for his thesis, when he was arrested and charged with the crimes of instigating national disunity and

leaking confidential documents. On 10 March 1999, the court of first instance in Urumchi sentenced him to 11 years' imprisonment and 2 years' deprivation of his citizenship. Mr. Tunyaz immediately appealed his sentence to the High Court in Urumchi, which dismissed the appeal in March 2000.

6. The court's decision was based on the assumption that Mr. Tunyaz had intended to publish a book in Japan for the sole purpose of instigating national disunity, and made copies of confidential documents at Urumchi so as to leak them to foreigners. The source, however, affirms that Mr. Tunyaz is a scholar who uses scientific methodology to study his subject, based on historical facts, not on ideology. The source affirms that pursuant to the terms of the court judgement, which the source was able to consult in August 1999, neither the (purported) book nor its manuscript was submitted to the court as proof. To the source's best knowledge, Mr. Tunyaz never wrote such a book in Japan.

7. As to the charge of leaking confidential documents, the source affirms that Mr. Tunyaz had received copies of documents from a librarian, after having been authorized by the authorities to do so. The foreigner who was alleged to have received the documents was never identified during the trial. The source accordingly concludes that the court judgement was based on a misrepresentation of facts relating to Mr. Tunyaz's activities: collection of source materials to complete a doctoral thesis dealing with the modern history of the Uighur people.

8. The authorities of the University of Tokyo have made the following representations to the Chinese authorities and/or the judicial instances in Urumchi, but none of them was successful.

9. The Government of the People's Republic of China, in its reply, states that Tohti Tunyaz, a Uighur male from Baicheng county in Xinjiang, went to Japan in 1994 to study. Since 1995, subsidized by foreign ethnic separatist organizations and anti-China forces in Japan, Mr. Tunyaz made annual trips back to the People's Republic of China to collect large quantities of State secrets. He also impersonated leading State cadres and bluffed his way around in Xinjiang and elsewhere, using deceit and bribery, among other means, to steal large quantities of classified material from the archives of the Autonomous Region and related State offices. He also apparently took these classified materials out of the country in order to give them to certain foreign organizations.

10. The Government states that on 10 March 1999 the Urumqi Intermediate People's Court tried Tohti Tunyaz and sentenced him to five years' imprisonment for the crime of stealing State secrets and 7 years' imprisonment for the crime of inciting national disunity; his consolidated sentence was 11 years and he was also deprived of his political rights for 2 years. Tohti Tunyaz filed an appeal with the Xinjiang Autonomous Region Higher People's Court and on 15 February 2000 this court rejected his appeal on second hearing and upheld the original verdict. Tohti Tunyaz is currently serving his sentence in Xinjiang Uighur Autonomous Region Prison No. 3.

11. The Government further advised that, while under investigation, Tohti Tunyaz steadfastly refused to confess his crime. Evidence of his crime includes, however, five top-secret archives and one classified document, all stolen by illegal means; two address books containing the names and telephone numbers of several important members of Xinjiang ethnic separatist movements in

other countries; a camera and micro-cassette recorder specially designed for stealing secret information; and notebooks and similar materials containing a large number of State secrets. In the course of the trial, the court also produced part of the original Japanese manuscript of The Inside Story of the Silk Route, a book advocating ethnic separatism, which Tohti Tunyaz had published in Japan in 1998.

12. According to the Government, the Constitution and laws of the People's Republic of China afford Chinese citizens full freedom of expression, opinion and association. It points out that in exercising these rights and freedoms, however, citizens must undertake certain corresponding obligations, such as refraining from actions that threaten national security, public safety, order or the rights and freedoms of others, in accordance with articles 18 and 22 of the International Covenant on Civil and Political Rights. In that regard, the Working Group welcomes and appreciates the fact that the Government, in its reply, makes reference to the International Covenant on Civil and Political Rights, which it has only signed. The Government pointed out that anyone who incites splitting the country and undermines national unity shall be sentenced to not more than five years of fixed-term imprisonment, criminal detention, control or deprivation of political rights; ringleaders or those whose crimes are grave shall be sentenced to not less than five years' fixed-term imprisonment

13. The Government further pointed out that in the People's Republic of China, simply having thoughts or beliefs without carrying out acts that violate criminal law does not constitute a crime. And it is even less likely that a scholar will be punished for expressing his academic viewpoint. Tohti Tunyaz, having stolen large quantities of State secrets, engaged in activities aimed at inciting ethnic separatism and seriously violated the laws of the People's Republic of China, merits punishment. Lastly, the Government concludes that the trials of Tohti Tunyaz by the Urumqi Intermediate People's Court and the Xinjiang Autonomous Region Higher People's Court were in accordance with the Constitution, the Code of Criminal Procedure and the relevant United Nations human rights instruments.

14. Acting in accordance with its methods of work, the Working Group forwarded the information supplied by the Government to the source, so that it could make additional comments, which it has done. The source states that Tohti Tunyaz published no book advocating ethnic separatism, making it impossible for him to have incited national disunity. It states that the Government's reply to the Working Group mentions that the court produced in the trial "part of the original Japanese manuscript of the book", which is not the actual publication, and the mere thought or plan of publishing, according to the Government's own interpretation, would not constitute a crime. Only the actual publication of such a book could.

15. The source insists there is no Japanese publication written by Mr. Tunyaz with a title related to "the Silk Road", "Inside Stories", or any topic related to his area of expertise, and no such title exists in the general index of books for the years leading up to or following the year 1998. Furthermore, a Japanese publisher, Sofukan, that once approached Tohti Tunyaz with its own plan to publish a book, has already written three letters to the courts trying Mr. Tunyaz explaining in full its offer and the circumstances under which that offer was not accepted by Mr. Tunyaz.

16. The source also states that Mr. Tunyaz was arrested on a charge of collecting materials for the purpose of writing and publishing a book aimed at ethnic separation, but the Government's reply explicitly states that he had already published a book in 1998 before his arrest and is far too contradictory and inadequate on the charge of publishing to incite ethnic separatism.

17. The source contests the information from the Government about the motivation for Mr. Tunyaz allegedly "stealing" State secrets. It considers that the description of him as using deceit and bribery, among other means, to steal large quantities of classified materials is inaccurate. It states that the Higher People's Court decision describes in detail the way in which Mr. Tunyaz copied a list of documents, not the documents themselves, relating to the second East Turkestan Independence Movement of 1944 - a list of documents more than 50 years old. The Higher Court based its decision only on the acquisition of the above-mentioned single list of documents of 1944 and not on "large quantities of classified materials". In the decision of the Higher Court, the source cannot find any mention of impersonation, deception or bribery on the part of Tohti Tunyaz. The 50-year-old list was given to him by a clerk working at the archives. The clerk brought the list to the hotel where Mr. Tunyaz was staying.

18. The source contends that there has been exaggeration about the evidence and states that some evidence mentioned by the Government has not been found in the trials. Some items mentioned by the Government, such as two address books with names of separatists, a camera and micro-cassette recorder, etc., were not admitted as evidence by the Higher Court. The source concludes that Mr. Tunyaz was sentenced to five years' imprisonment for improperly acquiring a single list of documents of historical interest concerning events that occurred more than 50 years ago. Such a list was obviously to be used in his ongoing historical research on the East Turkestan Independence Movement of 1944.

19. The Working Group is of the view that Mr. Tohti Tunyaz, as a graduate student and academic researcher, a fact not denied by the Government, has attempted to exercise his right to undertake academic research and collect data on this special subject, within the framework of his work as an academic researcher, a right guaranteed in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

20. In this context, the Working Group would like to refer to paragraph 86 of its most recent report to the Commission on Human Rights (E/CN.4/2001/14), in which it expresses its concern at the increasing misuse of the term "State secrets" to describe certain information the collection and dissemination of which are protected as fundamental freedoms under article 19 of the International Covenant on Civil and Political Rights.

21. According to information before the Working Group, especially that provided by the University of Tokyo, at whose Graduate School Mr. Tunyaz was a student, the data investigated were purely scientific. What is more, the allegations that the data might affect the unity of the People's Republic of China have in no way been proved.

22. Likewise, the Working Group considers that Mr. Tohti Tunyaz cannot be sentenced merely for writing a research paper, which, even if it were published, lay within his right to exercise the freedoms of thought, expression and opinion which are enjoyed by everyone and which can by no means be regarded as reprehensible if exercised through peaceful means, as they were in this case.

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

The deprivation of liberty of Tohti Tunyaz is arbitrary, as it contravenes articles 9, 18 and 19 of the Universal Declaration of Human Rights and articles 9 and 19 of the International Covenant on Civil and Political Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

24. 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 principles and standards set forth in the Universal Declaration of Human Rights, and encourages the Government to ratify the International Covenant on Civil and Political Rights, which it has signed.

Adopted on 17 May 2001