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## Closing the Tinnners' Swiss Criminal Case<sup>1</sup>

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On September 25, 2012, years after the judicial case started, the Swiss Federal Criminal Court in Bellinzona finally put to rest the Tinner criminal case. This case has continued to attract attention because the Tinner family had an important role in the notorious A.Q. Khan network but also because they turned on that network in 2003 and worked for the U.S. Central Intelligence Agency (CIA) in busting it.

The federal court, composed of a three judge panel, reluctantly accepted a plea bargain negotiated among the father Friedrich and his two sons, Urs and Marco, and the team of federal prosecutors led by Peter Lehmann. The three Tinnners pled guilty to violating Switzerland's War Matériel Act. They admitted that from the late 1990s to June 2003 they knowingly assisted Libya's production of nuclear weapons in violation of the Nuclear Non-Proliferation Treaty. They committed these acts by fabricating and supplying goods and expertise to the Khan network in Switzerland, the United Arab Emirates (UAE), Turkey, Malaysia, and elsewhere. For that admission and mindful of the mitigating circumstances of the Tinnners' work for the CIA, the federal prosecutor recommended that the Tinnners should not serve any more time in jail and pay court costs and relatively small fines.

A major beneficiary of this plea bargain is the United States government. The bargain reduced the prison sentences for the Tinnners and avoided the likely exposure of written and oral evidence in a full trial that would further reveal secret activities conducted by the CIA, some of which are alleged to have been illegal under Switzerland's neutrality laws.

This conviction also creates greater deterrence against committing illicit nuclear trade. The difficulties and delays encountered by the Swiss prosecution further send a message that those who pursue these crimes will be prosecuted.

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<sup>1</sup> For background on the Tinner case, see the ISIS reports *The Tinner Case: Time for a Frank, Open Evaluation* by David Albright and Paul Brannan, December 21, 2010, and *CIA Recruitment of the Three Tinnners: A Preliminary Assessment* by Albright and Brannan, December 21, 2010. The Swiss Parliamentary Intelligence Oversight Committee lists its own important, groundbreaking reports on the Tinner case and a host of other relevant official documents and reports here: <http://www.parlament.ch/e/organe-mitglieder/delegationen/geschaeftspruefungsdelegation/fall-tinner/pages/default.aspx>

<sup>22</sup> We attended the trial in Switzerland. Michael Rietz is an ISIS board member and a German attorney. In previous years, ISIS assisted the Swiss prosecutors. ISIS wishes to thank Mascia Gregori, the Secretary General of the Federal Criminal Court, for her gracious assistance in our attendance at the trial.

## Efforts to Prevent a Prosecution

The Swiss investigation of the Tinnings started in early 2004 after the first public revelations of the Khan network emerged. The Bush administration moved quickly to head off a Swiss government investigation by vouching for the Tinnings in private meetings with Swiss officials. But the interventions did not succeed as evidence emerged of the Tinnings' criminal activity that required a criminal investigation. Subsequently, the Bush administration stepped up its effort as one senior Bush administration official after another pressed the Swiss government to give the Tinnings favorable treatment. In addition, the U.S. government pressed to ensure that the illegal actions of the CIA's agents in Switzerland would not be prosecuted, a step approved in 2007 by the Federal Council, the Swiss government's executive ruling body. However, Federal Council efforts to absolve the Tinnings ran into more problems. In the end, under U.S. pressure and unwilling to pass Swiss-controlled records to the United States, the Federal Council, under the guidance of then Justice Minister Christoph Blocher, made the unwise, and to many, unjustified decision to secretly order the destruction of most of the evidence in the Tinning case, including any that showed the Tinning family's connection to the CIA. The Council hoped that without the evidence the prosecutors' case would collapse. The amount of information destroyed was immense. The government destroyed about 500 gigabytes of nuclear related information in about 900,000 files located on more than 80 computer drives.

But this action was bound to fail. In a transnational case as complicated as this one, there were multiple copies of reports and key evidence. The order's extreme secrecy complicated any government wide search for the records and in the end important records were missed. Moreover, evidence had been shared with many other governments, foreign advisors, and the International Atomic Energy Agency (IAEA), and this evidence was not subject to the Federal Council's destruction order.

Faced with an increasingly critical Swiss parliamentary oversight committee and the public revelation of the formerly secret destruction order, the Federal Council was in a poor position to continue ordering the shredding of copies as they emerged from archives or other sources that had been overlooked in the initial order. Enough evidence re-emerged for the prosecutors to recreate a compelling case against the Tinnings.

Throughout, the federal prosecutors steadfastly maintained that the three Tinnings were not above Swiss law and that years of criminal acts must be subject to the Swiss justice system. However, they clearly stated that demonstrated work for the CIA could be a mitigating circumstance, important in reaching a reduced sentence.

The prosecutors' perseverance paid off in Bellinzona and stood as a sharp rebuke to the efforts by the Bush administration and the Federal Council to thwart the prosecution. In his statement, the Federal Court's President, Walter Wüthrich, noted critically the extremely questionable destruction of the records by the Federal Council and the lack of international legal assistance from the United States. Looking back, a better U.S. course would have entailed insisting that the Tinnings fully cooperate with the Swiss authorities from the beginning and admit guilt while seeking reduced punishments for them. If it had done so, this case could have been settled quietly years ago with much less controversy and embarrassment, and fewer leaks of CIA activities.

So far, the U.S. government has not made a public statement about the plea bargain, and a request to the CIA for comment has gone unanswered. Because Friedrich formally started the plea bargaining process, his involvement raises the question of whether the U.S. government promoted or at least agreed to the idea of settling the case in this manner. Any U.S. pressure on the Swiss government over the Tinnings stopped years ago. Certainly, the U.S. government must have realized that this problem

was better settled in this manner, avoiding a long trial and the risk of a more severe sentencing. However, the U.S. government's role in supporting this plea bargain remains unknown. Yet any U.S. support for the deal deserves credit.

The United States will need to continue monitoring the Tinnners' activities. The Tinnners will require both U.S. and Swiss government monitoring to ensure that they do not resume their past careers in illicit nuclear trade, possibly seeking to benefit from secret centrifuge and nuclear weapon designs they are suspected to still possess.

## **Uncomfortable with Sentence**

Although the benefits of the plea bargain are apparent, the judges were critical of the short sentences received by the defendants in the plea deal. President Wüthrich stated that the court believed that the penalties were at the lowest level possible. The proposed penalties amounted to 20 percent of the maximum possible penalty. This ratio is not appropriate for the father and two sons, said the President. The court did not believe that their guilt was as comparatively small as the penalties given.

The court in particular did not understand why the plea bargain did not contain a longer prison sentence for Friedrich, who they viewed as the ringleader. He set up the initial relationship with Khan in the 1970s and provided Khan with key equipment for his nuclear weapons program. He was the leading figure in committing the illegal acts with regard to Libya. Moreover, he involved his sons in those crimes.

Part of the cost of obtaining their guilty pleas to a major crime was that the defendants would not serve any additional time in prison. As a result, Urs and Marco were issued sentences of 4.2 and 2.4 years respectively. These prison sentences matched the time each had already served in prison. Both Urs and Marco were held in prison while the charges against them were investigated. The courts had ruled that Urs and Marco would be held in prison during the investigation phase of the case because if freed on bail, they could flee Switzerland, perhaps aided by the CIA. This type of incarceration is often more onerous than regular prison, since it does not involve a clear idea of when the detainee will be released or a work regime that can break the monotony. Their father Friedrich received two years of probation, which if he violates, he will serve two years in jail minus the five months he already served during the investigation phase.

To these punishments must be added the intangible effect of Swiss and international media attention that heightened the public's awareness of the Tinnners' crimes. Although the Tinnners and their allies have tried to emphasize their exculpatory role with the CIA, the overall coverage has consistently reported on their crimes, which they have now admitted committing.

## **Judges Probed CIA Connections**

Friedrich stated in court that he alone established the first contacts with the CIA and later informed and expected his sons to participate in this collaboration, which they did. This collaboration was formalized in a contract with a CIA front company, Big Black River Technologies, dated June 18, 2003, that involved the payment of one million dollars. Friedrich stated that, in addition, they received payments from the CIA based on a daily rate plus fees and special works that included the sale of goods they had made for the Khan network but could no longer sell. He refused to discuss the payments for these other activities. Marco said during the trial that the CIA had not fully paid them for at least one of

these other special services, namely the purchase of specialized valves that the Tinnerns had made for the Khan network but had yet to receive a payment.<sup>3</sup>

Friedrich's answers during the trial are in contrast to media reports that Urs had worked with the CIA starting in about 2000 or 2001. Friedrich's answers made it appear as though their collaboration with the CIA started only in 2003. Urs did not contradict his father's version, and generally resisted discussing his work with the CIA. It was announced right after the trial that he would publish a book by the end of October, so the debate is likely to continue on what exactly were the timing and circumstances of the Tinnerns' work for the CIA.

Unexpectedly, the court did not accept that the work for the American authorities was an important mitigating circumstance in the sentencing. President Wüthrich said that the Tinnerns had refused, despite frequent questioning during the trial, to detail or prove whether the cooperation with the American authorities in its volume and value really resulted in a significant contribution to folding up the Khan network. Moreover, that work itself constituted an offense against Swiss laws, even though the Tinnerns were not indicted for that violation as a result of the 2007 Federal Council decision. From a legal point of view, whenever an undercover agent supports illegal acts, one must ask whether the defendants did it for the higher goal of helping to destroy the Khan network or mainly for the money and a hope to escape punishment. The court believed that it was principally the latter. It judged that the Tinnerns' motivation for cooperation with the American authorities appeared to be fear of the consequences of not collaborating with them and a desire for money at a time when they were having trouble getting paid for their work by Khan's right-hand man B.S.A. Tahir. In particular, the judges did not find convincing the Tinnerns' answers to their question as to why the accused had not reported what they did much earlier to Swiss authorities (or for that matter to U.S. authorities), given that they admitted in the plea agreement that they knew they were aiding Libya's nuclear weapons effort as early as 1998 or 1999.

## **Suspicion of Hidden Monies**

The judges expressed doubts about the claims by the Tinnerns that they were as poor as they stated in court, implying that they may have hidden funds. The judges questioned them about their incomes from the Khan network and the CIA, and the many different apparently shady accounts they had established in Liechtenstein and elsewhere that have been associated with income from those sources.

The judges presented evidence that the Tinnerns received a total of 25.6 million Swiss francs, of which 22.5 million Swiss Francs came from Tahir, their point of contact for payment in the Khan network. The income included a credit of 800,000 Swiss francs from the CIA front company Big Black River Technologies during the period December 2003 to January 2004. This payment may be in addition to the one million dollar initial payment in June 2003.

Under questioning by the judges, the Tinnerns' largely professed ignorance of the accounts or claimed that they could not remember. At one point during questioning, a frustrated Judge Peter Popp told Marco, the one of the three acknowledged as responsible for the family company's financial accounts, that he did not believe him and his explanations were not convincing. "I do not ask for the last penny, I just ask roughly what you made with this money," he said. Marco did not respond. In the end, the judges learned little more about the total amount of money the Tinnerns earned from the Khan network

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<sup>3</sup> The amount the CIA paid for valves is unknown. Each valve with its electronic control can cost up to 2,000 Swiss francs, based on an invoice from Phitec, one of the Tinner companies, to the South African node of the Khan network. With 1,500 ordered, the valves were valued at up to three million Swiss francs.

and the CIA, or if any of that money remains hidden. With most of the accounting records destroyed by the Federal Council, and the lack of legal cooperation from the United States, the court said it could not determine to what extent their compensation claims were accurate.

## **Plea Bargain Accepted**

Despite its criticisms, the court accepted the plea bargain. If the plea deal was rejected, President Wüthrich said there would need to be a standard trial and a high risk that the trial would collapse and the accused would go free without this guilty verdict, damaging the judiciary and justice system. The destruction of so much evidence would naturally raise doubts about the ability of the defendants to receive a fair trial, and the CIA's role would have intensified the controversy and drama of a trial. So, it was in the interests of the court and the Swiss state (and U.S. government) to see the accused convicted in a plea bargain. With the conviction, a large part of the life's work of each offender is at least officially considered criminal, he ruled. The verdict also highlighted the seriousness of the crimes committed by A.Q. Khan and his accomplices, at a time when most national prosecutions have failed to bring this ring of smugglers to justice.

## **Khan Network Prosecutions Over**

This case appears to mark the last of the prosecutions of the former members of the Khan network. For such a momentous crime, most of the alleged criminals have hardly suffered adequate punishments. Ironically, Urs and Marco Tinner, who performed important services for the CIA in busting the Khan network and became involved in criminal activities at their father's urging, suffered some of the longest times in prison.

Although the Tinner family was a primary node of the Khan network, it was by no means the only one. This network was located in several countries and involved upwards of 50 key people. Before the Khan network was busted in 2003 and 2004, it had worked for years secretly supplying the nuclear programs of Libya, North Korea, and Iran. It attempted to supply Iraq and South Africa. (Friedrich himself did send goods to the Iraqi gas centrifuge program in 1990 but Jordanian authorities impounded them as a result of the U.N. Security Council embargo imposed on Iraq following its invasion of Kuwait in 1990.) Members of the network, including perhaps also the Tinnings, supplied India's gas centrifuge program.

Criminal cases were pursued successfully against the Khan network members in Germany and South Africa. Gotthard Lerch, responsible for fabricating the feed and withdrawal systems of a Libyan centrifuge plant, received a prison sentence of five and one half years. He served a total of 2 years, one year of which was in Switzerland while he awaited extradition to Germany. Two of those who worked with Lerch in South Africa, Gerhard Wisser and Daniel Geiges, were sentenced to prison terms of up to 18 years, but only given five years of conditional imprisonment, mostly house arrest. Tahir, Khan's right hand man, was never charged but was held for four years in a Malaysian prison under a draconian internal security law. Only Tahir's length of incarceration rivaled Urs' and Marco's.

Khan operated this network outside Pakistani government authority in the cases of Libya and Iran and exceeded government sanction in the case of North Korea. Khan admitted his guilt in 2004, but was never prosecuted, instead pardoned and subjected to several years of house arrest. Khan subsequently changed his story and claimed he only followed Pakistani government orders, a claim that has little credibility and appears related to his attempts to recover his tarnished reputation. Few believe he will ever be brought to justice. Likewise, a half-dozen of his key lieutenants and accomplices have not been brought to justice. The rest of those involved with the Khan network—for example, the directors and

employees at SCOPE and SCOMI Group in Malaysia, the then head of Bikar Metal Asia, Peter Griffin and his son Paul Griffin, the Sri Lankan Mohammed Farooq, several Libyan citizens, and many subcontractors and suppliers who provided key goods, arranged transportation of those goods, or provided training to the Libyans—were never prosecuted. A criminal case against other members of the Khan network in Turkey is not yet complete but few expect a prosecution to emerge.

## Conclusion

The Swiss justice system has brought the difficult Tinner case to an acceptable end. Despite immense obstacles, justice was served. Although the judges thought the sentences should have been harsher, obtaining guilty verdicts for this crime was important. There was a real risk in this case that the Tinnings could have escaped justice.

Switzerland has paid a high price. The Swiss government was embarrassed by the Tinnings being able to freely break Swiss laws prior to 2003 and by the clumsy post-2003 attempt to stop their prosecution. The Bush administration also ended up looking heavy-handed in its effort to prevent the prosecution of its agents and the Tinnings. It also inadvertently contributed to even more leaks about the CIA's operations in Switzerland and elsewhere.

However, Switzerland is now in a much better position to deal with nuclear smuggling and is more aware of its obligations under the Nuclear Non-Proliferation Treaty. The Swiss parliament, which played a key role in bringing the Tinner case to a successful end, is better able to oversee the Federal Council. The Swiss federal prosecutors have shown toughness and have developed an expertise that bodes well for future cases against those who seek to help other countries build nuclear weapon programs.

The lessons for the United States are harder to draw. In its full extent, the CIA recruitment of the Tinnings to aid in busting the Khan network was far more successful and productive than the U.S. post-arrest efforts to free the Tinnings. Quietly settling the case provided the United States a face-saving way to avoid further negative impacts expected in a public and highly contentious trial. This case shows the risks of not cooperating with foreign legal investigations, particularly in a friendly democratic state. Although Switzerland decided under great pressure not to prosecute CIA agents, this case should remind the CIA that its agents are not exempted from the laws of friendly nations. In such cases, and because these cases involve highly sophisticated issues and tradeoffs, any such covert, potentially illegal action should require concurrence of not only senior U.S. intelligence officials but also high level U.S. law enforcement, diplomatic, and political decision makers. The full range of options should be explored, and if other options can work, they should be preferred to an intelligence operation. This case also reinforces that law enforcement and intelligence cooperation internationally is a more effective long term strategy to stop the illicit trade in the wherewithal to make nuclear weapons.

In the long run, those who look at the Tinner case cannot help but receive a strong message of deterrence not to commit such crimes. The Swiss justice system proved that those who illegally help states build nuclear weapons will not escape justice. The challenge is to make sure this happens universally.