



**International covenant  
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political rights**

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HUMAN RIGHTS COMMITTEE  
Ninety-sixth session  
13 to 31 July 2009

**VIEWS**

**Communication No. 1539/2006**

<u>Submitted by:</u>	Mohammad Munaf (represented by counsel, Ms. Amy L. Magid)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	Romania
<u>Date of communication:</u>	13 December 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 21 June 2007 (not issued in document form)
<u>Date of adoption of Views:</u>	30 July 2009

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\* Made public by decision of the Human Rights Committee.

*Subject matter:* Removal of the author from the Embassy of the State party in Iraq by MNF -I, subsequent trial, conviction, possible death sentence in Iraq

*Procedural issues:* Insufficient power of attorney; alleged victim not within the jurisdiction of the State party; absence of “victim” status; failure to substantiate claims; failure to exhaust domestic remedies; abuse of the right of submission

*Substantive issues:* Right to life; Notion of “most serious crime”; inhuman treatment, arbitrary detention; unfair trial

*Articles of the Covenant:* article 6; 7; 9; 10 paragraphs 1 and 2; and 14, paragraphs 2 and 3 (b), (d), and (e)

*Articles of the Optional Protocol:* article 1; 2; and 5(b)

On 30 July 2009, the Human Rights Committee adopted the annexed text as the Committee’s Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No.1539/2006.

[ANNEX]

**ANNEX**

Views of the Human Rights Committee under article 5, paragraph 4, of  
the Optional Protocol to the International Covenant on Civil and Political rights

Ninety-sixth session

concerning

**Communication No. 1539/2006\***

Submitted by: Mohammad Munaf (represented by counsel,  
Ms. Amy L. Magid)

Alleged victim: The author

State Party: Romania

Date of communication: 13 December 2006 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant  
on Civil and Political Rights,

Meeting on 30 July 2009,

Having concluded its consideration of communication No. 1539/2006, submitted to the  
Human Rights Committee on behalf of Mr. Mohammad Munaf under the Optional Protocol to  
the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the  
communication, and the State party,

Adopts the following:

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\* The following members of the Committee participated in the examination of the present  
communication: Mr. Mohammed Ayat, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari  
Bouزيد, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Mr. Rajsoomer  
Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada,  
Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Ms. Iulia  
Antoanella Motoc did not participate in adoption of the Committee's views.

### **Views under article 5, paragraph 4, of the Optional Protocol**

1.1 The author is Mr. Mohammad Munaf, an Iraqi-American dual national and a Sunni Muslim, who is currently detained at ‘Camp Cropper’, Baghdad, under the “physical custody” of the Multinational Force - Iraq (MNF-I) and/or U.S. military officers, and is awaiting a review of his case by the lower court.<sup>1</sup> He claims to be a victim of violations by Romania of article 6; article 7; article 9; article 10, paragraphs 1 and 2; and article 14, paragraphs 2 and 3 (b), (d), and (e), of the International Covenant on Civil and Political Rights<sup>2</sup>. The author is represented by counsel of Robins, Kaplan, Miller and Ciresi, Minneapolis, United States.

1.2 On 21 December 2006, pursuant to rule 92 of the Committee’s rules of procedure (Interim measures), the Committee’s Special Rapporteur for New Communications and interim measures requested the State party to ensure, to the extent possible, and through whatever channels it deemed appropriate, to adopt all necessary measures to ensure that the life, safety and personal integrity of the author and his family were protected, so as to avoid irreparable damage to them, while this case was under consideration by the Committee, and to inform the Committee on the measures taken by the State party in compliance with this decision.

1.3 On 7 February 2007, in response to the Special Rapporteur’s request, the State party submitted, *inter alia*, that it opposes the death penalty, that it requested the extradition of the author to the State party to answer criminal charges but that through no fault of its own, the author was not extradited (see para. 4.6 below). It also submitted that since the Committee’s request under rule 92, the following démarches have been made by the Romanian Embassy in Baghdad to the Iraqi Ministry of Foreign Affairs and the Command of the MNF-I: the Embassy stated that Romania was committed to the abolition of the death penalty and had ratified all relevant treaties in this regard; that no action should be taken to endanger the life and personal integrity of the author; and that the death penalty should not be imposed upon him. To the Command of the MNF-I it also stated that, "Romania considered it appropriate that Mr. Munaf remains in the custody of the Multi- National Force." It also submitted that, according to its own information, there is no indication that the author's family is under any threat in Romania and they have not requested themselves any protection from the State party’s authorities.

### **The facts as submitted by the author**

2.1 In March 2005, the author and his family (Romanian wife and children) were living in Romania. On 15 March 2005, the author travelled to Iraq with three Romanian journalists, as their translator and guide. On or about 28 March 2005, the travellers were kidnapped by unknown armed forces. An Iraqi group identifying itself as the “Muadh Ibn Jabal Brigade” publicly claimed responsibility for the kidnapping. The hostages were held captive for 55 days. On or about 22 May 2005, they were all released without harm and taken to the Romanian

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<sup>1</sup> At the time of the submission of this communication to the Committee he author had been sentenced to death by the Central Criminal Court of Iraq (“CCCI”). However, prior to the consideration of admissibility on 2 April 2008, this sentence was quashed upon appeal before the Iraqi Court of Cassation with a direction for further investigation.

<sup>2</sup> The Covenant and Optional Protocol entered into force for Romania on 23 March 1976 and 20 October 1993, respectively.

Embassy in Baghdad, Iraq. The Romanian Embassy immediately handed the author over to “United States military officers”, in whose custody he has remained ever since.

2.2 U.S. military personnel transported the author to ‘Camp Cropper’, a detention facility located at the Baghdad International Airport. According to the author, while in detention at ‘Camp Cropper’, he was threatened with torture and subjected to “abuse and mistreatment” by both American and Romanian officials who attempted to coerce statements from him. For more than seven months, he was held in complete isolation in a small box-like cell. His family has been threatened by U.S. and Romanian officials. The officials told the author that if he did not confess to a role in the kidnapping of the Romanian journalists, he, his sister (who lives in Iraq), and his wife (whose current residence is unclear) would be sexually assaulted. The author submits that other prisoners in ‘Camp Cropper’ have also been beaten and tortured. He has been subjected to painful and humiliating searches of his person, and he spends 23 hours a day in solitary confinement in a cell measuring approximately two square metres. For one hour each day, he is released into a “cage” with men accused of murder, who threaten him with violence. All his possessions have been removed from him except his copy of the Koran and he is forced to wear a yellow suit reserved for condemned prisoners.

2.3 On 12 October 2006, after approximately sixteen months of detention and alleged mistreatment at Camp Cropper, the author was presented, along with five other defendants, to the Central Criminal Court of Iraq (“CCCI”) to face charges for alleged involvement in the kidnapping. He was represented by a privately engaged lawyer. The author alleges that during these proceedings he was not presumed innocent; that he was not permitted to contact his American counsel (although he was represented by local counsel); that he was not given adequate time and facilities for the preparation of his defence; that he was not permitted to cross-examine witnesses against him or to call witnesses on his own behalf.

2.4 Prior to the proceedings, a judge of the CCCI had told the author’s lawyer privately that the charges against him would be dropped, as the Romanian Embassy had not come forward to support the prosecution, a necessary prerequisite for the pursuit of such a charge. According to the author, because he was charged with the kidnapping of Romanian citizens, under Iraqi law, the CCCI could not prosecute him without a formal complaint from the Romanian government. During proceedings before the CCCI, a U.S. Lieutenant made a formal complaint against the author. He claimed that Romania had authorized him to make the complaint on its behalf and to request that the author be sentenced to death. He claimed that the authorisation was documented in a signed letter. This letter was not produced in Court and neither the author nor his counsel has ever seen it. In addition, a U.S. General stated in open court that all the defendants were guilty and should be sentenced to death. According to the author, at this point, the judge requested everyone, except his judicial assistants and the U.S. Lieutenant and General, to leave the court room. Thus, both he and his counsel were excluded from the courtroom for part of the proceedings. After fifteen minutes, counsel and the defendants were readmitted whereupon the defendants were convicted of kidnapping and sentenced to death by hanging.

2.5 On 15 October 2006, a few family members visited the author in detention, during which he informed them that he was being subjected to ill-treatment subsequent to his death sentence. An American soldier supervised the visit, after which he informed the family that no future visits

or telephone calls would be allowed. For over one month following this visit, the author was held in detention incommunicado.

2.6 According to the author, the State party, although it asserted that it did not authorize any U.S. officer to speak on its behalf during the CCCI proceedings, took no official action to clarify this issue with the Iraqi authorities. On 2 November 2006, a press release was merely issued by the Romanian Ministry of Justice, stating that it had never authorised any American official to represent the Romania government during the proceedings before the CCCI. According to the author, despite the State party's knowledge of his conviction and sentence, it failed to take any other action to intervene on his behalf. On 23 November 2006, the State party successfully obtained a video-conference with the author to obtain his testimony in relation to criminal proceedings in Romania, in which he was named as a defendant for his alleged role in the kidnapping. According to the author, despite such successful negotiations with his custodians, the State party made no effort to secure his release or to protect him from torture, trial without due process or imminent death.

2.7 At the time of submission of his communication, the author's appeal of his conviction was still pending before the Iraqi Court of Cassation. The author feared that if his appeal was unsuccessful he would be placed under the control of the Government of Iraq, and would be subjected to much worse treatment than that experienced to date, which would amount to torture. According to the author, the Human Rights Office of the UN Assistance Mission in Iraq has consistently documented the widespread use of torture there. Human Rights Watch has also reported that most allegations of ill-treatment of detainees implicate the Iraqi Ministry of the Interior. Sunni Muslims such as the author experience particularly harsh treatment. The author fears that, if his appeal fails, he will ultimately be executed by hanging.

### **The complaint**

3.1 The author claims violations of the Covenant based on the State party's failure to act with respect to the author<sup>3</sup>. He claims a violation of article 6, as the State party made no inquiry and sought no assurances before allowing US officers to remove him from the safety of the Romanian Embassy. It made no inquiry and sought no assurances with respect to the conditions of confinement and treatment in Camp Cropper and made no inquiry and took no action to protect the author from the CCCI proceedings, which lacked due process safeguards. The State party was aware of evidence implicating the U.S. forces in the abuse and torture of detainees when it authorised his transfer to US custody. Even upon learning that a US officer had appeared at the proceedings, falsely claiming to be appearing on behalf of the State party and filing a complaint, in which he demanded that the author be sentenced to death, the State party made no inquiry and took no action to clarify its position. His sentence was imposed unlawfully following a prosecution that proceeded on the basis of a US officer's false authority, but the State party neither undertook appropriate inquiries and nor took action to protect his life. The author was sentenced to death for a crime that did not involve loss of life and cannot be considered a "most serious crime" within the terms of article 6, paragraph 2. By failing to act, the State party

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<sup>3</sup> He refers to the Committee's jurisprudence in the case of *Judge v. Canada*, Communication No. 829/1998, Views adopted on 5 August 2003.

established the crucial link in the causal chain that would make his execution possible. It thus violated and continues to violate his right to life under article 6.

3.2 The author claims violations of articles 7 and 10, paragraph 1, as the State party's decision to transfer him to the custody of U.S. officers without seeking assurances, as well as its subsequent failure to take any action to protect him, led to him being subjected to cruel, inhuman and degrading treatment (see para.2.2 above). Since his conviction, the author has had the additional burden of the knowledge that he has been sentenced to death, and the fact that he is forced to wear a yellow suit reminds him of his status as a condemned prisoner. He claims that he has already suffered irreparable psychological harm, and, if he loses his appeal, he will be subjected to further harm by Shiite-led Iraqi security forces and ultimately hung, which would in itself constitute a violation of article 7 of the Covenant, due to the prolonged suffering and agony this method of execution may cause. Even when a hanging is carried out in the most humane way possible, instantaneous death rarely occurs. In Iraq where hangings are carried out in secret and the executioners learn by trial and error, the author submits that the victims may remain conscious as they slowly suffocate to death. He also claims a violation of article 10, paragraph 2, as he was not separated from convicted prisoners prior to his conviction.

3.3 The author claims a violation of article 9 of the Covenant, as the State party arbitrarily handed the author over to US authorities violating his right to liberty and personal security. He also claims violations of article 14, arising from the Iraqi judicial proceedings, which he claims remain ongoing while his appeal is pending, as the State party could take steps to correct the miscarriage of justice that occurred during the proceedings of 12 October 2006. He claims that his following rights were violated: article 14, paragraph 2, as he was not presumed innocent; article 14, paragraph 3 (b), as he was not permitted to speak with his American counsel and although he was represented by counsel, he was not given adequate time and facilities for the preparation of his defence; article 14, paragraph 3 (e), as he was not permitted to cross examine witnesses against him or to present any witnesses on his own behalf; and article 14, paragraph 3 (d), as both he and his counsel were excluded from the courtroom for part of the proceedings. If the State party had informed the CCCI that it did not support the prosecution of the author, the proceedings and thus the violations implicit therein could have been avoided.

3.4 As to exhaustion of domestic remedies, because the author was immediately transferred to the physical custody of U.S. military officers, there existed and continues to exist no domestic remedies for him to challenge the State party's decision to allow his removal and transfer from the Embassy, as well as its failure to intervene in the Iraqi criminal proceedings on his behalf. Even if judicial remedies were available, he has had no access to them by virtue of his incarceration. He requested the State party's intervention, in particular by sending several letters to the Romanian Embassy in Washington, but it failed to respond. He also informed the State party of his intention to file a complaint before the Committee, in the event that the State party refused to take any action on his behalf. The U.S. Government asserts that he is in the legal custody of the MNF – I, of which Romania is a member. As a result, the U.S. courts have thus far declined to assert *habeas corpus* jurisdiction over any U.S. custodians.

**State party's submission on admissibility**

4.1 On 5 March 2007, the State party contested the admissibility of the communication on the grounds that there was insufficient power of attorney; that the author was not within the jurisdiction of the State party (extra-territoriality); that he was not a "victim" within the terms of the Optional Protocol; that he had failed to substantiate his claims; that he had failed to exhaust domestic remedies; and that he had abused the right of submission.

4.2 On the facts, with respect to the events that took place in Iraq, the State party submits that on 22 May 2005, the four hostages were released as a result of an operation involving a military effort under the command of the MNF-I – the only foreign military authority allowed on the territory of Iraq, according to the relevant UN Security Council Resolutions. The hostages were immediately brought by the MNF-I to the premises of the Romanian Embassy in Baghdad. The Romanian authorities, "took the three Romanian citizens into custody", while the author (American-Iraqi national) remained "under the authority and protection of MNF-I". On the same day, the author was debriefed by the MNF - I. On 23 May 2005, the MNF- I detained him on suspicion of having represented a threat to the security in Iraq. Since then he has been detained by MNF-I troops at 'Camp Cropper' detention facility. The State party claims that there is no Romanian presence in this facility unit. It is exclusively run by the U.S. military.<sup>4</sup>

4.3 On 17 May 2005, the Romanian judicial authorities initiated criminal proceedings against the author on charges of violations of Romanian criminal law on issues of terrorism, relating to the kidnapping.<sup>5</sup> The proceedings were based on the principle of "territoriality", as some of the alleged preparatory and executive acts were allegedly carried out on Romanian soil, and the principle of "personality", considering that the victims were Romanian citizens. The author was charged with acts of terrorism and with being an accomplice in the kidnapping allegedly organised by one O.H.

4.4 Romanian prosecutors participated in some of the investigations carried out in Baghdad, with the approval of the Iraqi judicial authorities. They interrogated and took statements from the author on the following days: 30-31 May 2005; 26-27 July 2005; 14-15 September 2005; and 18 November 2006. They noticed that the author was well-treated and that he benefited from decent food and proper conditions of personal hygiene. They did not notice any signs of ill-treatment or physical or psychological coercion. The author did not raise any claim against the MNF-I authorities, nor did he draw their attention to acts of torture or ill-treatment to which he, now, claims he was subjected to during detention. The statements were either taken in the presence of the author's Iraqi or Romanian lawyer (who travelled to Baghdad for some of the interrogations). There was also a U.S. representative from 'Camp Cropper' present during all the interrogations who attested to the respect of the author's civil and political rights. All the interrogations were audio/video recorded. None of his lawyers contested the statements, nor did they claim that they were given under coercion.

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<sup>4</sup> The State party has provided a copy of a letter, dated 7 February 2007, from the Romanian Ministry of Defense to the Secretary of State to the effect that the Romanian Ministry of Defense never had personnel or troops in the detention centre at Camp Cropper.

<sup>5</sup> A crime relating to the constitution of and participation in terrorist groups, financing of terrorist acts and complicity in terrorist activities.

4.5 The Romanian prosecutors' mandate was only to hear the author's statements relevant to the cases brought before the Romanian judicial authorities. They were not empowered to seize the Iraqi judicial authorities with a case against the author. The State party confirms that a statement was made on behalf of the Ministry of Justice on 2 November 2006, in which it was stated that it had "not authorised any American official to represent Romania during the Iraqi legal proceedings concerning Mr. Mohammad Munaf". In addition, the Romanian representatives from the Embassy in Iraq had no knowledge either of the trial, or of the alleged authorisation allegedly given by the Romanian authorities to the US military officer. The Romanian Ambassador to Iraq denied any knowledge of the trial, stating that he had contacted U.S. and Iraqi authorities to ask for information but was unsuccessful. The spokesperson of the Romanian Ministry of Foreign Affairs also issued a statement to the same effect.

4.6 The State party also refers to its efforts to have the author transferred into its custody by way of extradition. On 24 September 2005, the Romanian Ministry of Justice received, from the Court of Appeal of Bucharest, a request for extradition of the author, addressed to the competent U.S. authorities pursuant to a bilateral convention on extradition. On 25 September 2005, the request was transmitted to the U.S. Embassy in Bucharest. The U.S. authorities did not accede to the request, as they considered that the conditions set forth in the bilateral treaty had not been met: specifically, the accused was neither on U.S. territory nor on a territory occupied or controlled by the U.S. His extradition was also considered impossible, as there was no bilateral extradition agreement between Romania and Iraq and, in any event, it's the Constitution of Iraq prohibits the extradition of its own nationals.

4.7 On 19 December 2005, 20 March 2006, 26 April 2006, 26 July 2006, 16 October 2006, 7 November 2006, the Court of Appeal of Bucharest issued requests to the Iraqi judicial authorities for the hearing of the author by videoconference, relating to the proceedings in Romania. No conclusive answer was received by the Iraqi authorities except that, since the author was in the custody of the MNF-I forces, its authorities were not in a position to reply to the State party's requests. Similarly, when approached by the Romanian authorities on several occasions (December 2005, 21 March 2006, 4 May 2006, and 24 May 2006), the U.S. authorities considered that such requests should be directed to the Iraqi authorities. Following repeated requests to the Iraqi authorities, a video conference was allowed to take place on 23 November 2006 at the Court of Appeal of Bucharest with the help of the MNF-I and of the U.S. Embassy in Baghdad.

4.8 On 20 February 2007, the Court of Appeal of Bucharest decided that the author should be heard on 27 March 2007 through a rogatory commission. The Romanian Ministry of Justice requested the assistance of the Iraqi authorities for this purpose and requested a copy of the author's file before the CCCI. However, the Iraqi Ministry of Justice stated that there was no legal bases to proceed with the request, and that the video conference of 23 November 2006 had been a favour granted *ex gratia* to Romania.

4.9 On the admissibility of the current communication, the State party submits that no power of attorney has been provided by the author himself. The authorisation of counsel to act on his behalf was provided by his sister, who provides no proof that she was authorised to act on his behalf. As to the argument that, as the author is being held incommunicado, he is prevented from giving express authorisation to counsel, the State party argues that the author has periodic

contacts with his family, as well as his Iraqi and Romanian lawyers, whom he could have authorised to act on his behalf. Thus, from the State party's point of view, the communication is inadmissible as a threshold matter under article 1 of the Optional Protocol for want of sufficient authorisation.<sup>6</sup>

4.10 The State party further argues that the communication is inadmissible under article 1 of the Optional Protocol and article 2, paragraph 1, of the Covenant, as the author was not within its territory and was not subject to its jurisdiction<sup>7</sup>. It submits that the author has not been subject to its jurisdiction since 15 March 2005, when he left the State party to go to Iraq together with the three Romania journalists. Romania was never an occupying power in Iraq, a circumstance which could have raised the issue of Romanian extra-territorial jurisdiction on Iraqi territory and over its citizens. Since his release from kidnapping he has been in the custody of the MNF-I international force acting in the territory of Iraq with the consent and at the request of the Iraqi authorities, while he was tried by the CCCI – a national court of Iraq that operates under Iraqi law. Under the pertinent UN Security Council Resolutions, the MNF-I and the Government of Iraq further agreed that the former would maintain physical custody of pre-trial detainees waiting for criminal prosecution in Iraqi courts under Iraqi law, in light of the fact that many Iraqi prison facilities had been damaged or destroyed during the war. The author has never been under the authority and effective control of the State party, since his arrival in Iraq, as the only foreign authority over the Iraqi territory belongs to MNF-I, acting under a UN mandate. The fact that the State party failed in its efforts to bring the author under its jurisdiction to face charges in Romania or even to obtain a copy of the author's criminal file in Iraq (para. 4.6 above), demonstrates the lack of authority or control over the author by the State party, from which the lack of jurisdiction over him follows.

4.11 The author himself admitted in his communication that he is not under the State party's jurisdiction, but instead in the "physical custody" of "U.S. military officers", as part of the MNF-I. This is further demonstrated by the author's appeal solely to the U.S. courts to seek to prevent his delivery by the U.S. authorities at Camp Cropper to the Iraqi authorities. In this regard, it refers to the decisions of the U.S. courts, which asserted that he was "in the custody of a multinational entity", and thus neither under the jurisdiction of the U.S. nor the State party.

4.12 The State party denies that the Romanian Embassy "allowed" U.S. military officers to take custody of the author. The hostages' release was secured by the MNF-I and not by U.S. military officers. His presence in the Romanian Embassy has no legal significance; he remained in the custody of the MNF-I and was never transferred *de jure* or *de facto* into the State party's jurisdiction. The Romanian authorities had no reason to request the custody of the author, as at the moment of departure from the Embassy he was only to be submitted to a debriefing

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<sup>6</sup> It refers to the Committees' Views in *Yutronic v. Chile*, Communication No. 740/1997, adopted on 23 July 1998.

<sup>7</sup> To support its argument, the State party refers to the jurisprudence of the European Court of Human Rights: *Iiaşcu and others v. Moldova and Russia*; *Issa and others v. Turkey*; and *Bankovic and others*. It refers to European Commission of Human Rights in *Cyprus v. Turkey*, 1994 and *Loizidou v. Turkey*, Judgement on Preliminary Objections, 1995. It also refers to the Committee's Views in *Lopez v. Uruguay*, Communication No. 52/1979 and *Celiberti v. Uruguay*, Communication No. 56/1979 and its General Comment No.31.

procedure by the MNF-I. As there was no information at that time to indicate the future initiation of criminal proceedings against him in Iraq, the State party's authorities could not have known at that time whether there were substantial grounds to believe that he was at risk of torture, ill-treatment or a death sentence, as set out in the Committee's General Comment 31. There was no reason for the State party's authorities to request that he be delivered into their custody to face charges against him in Romania for his involvement in the kidnapping. Only the next day was he arrested on charges of participation in the kidnapping of the three Romanian journalists. According to the State party, the author had "requested to go to the U.S. Embassy", from which one could infer that it was his will to leave the Romanian Embassy.

4.13 As to the author's reliance on article 22 of the Vienna Convention on Diplomatic Relations to establish a causal link to the State party's responsibility for the author, the State party submits that this article concerns the inviolability of Embassy premises only and does not apply to Embassy personnel, which fall under different articles of the Vienna Convention. The author's presence for a short time in the Embassy is not equivalent under the Vienna Convention or any other provisions of international law to the Embassy taking him into custody. Embassy personnel gave their consent to the representatives of MNF-I to enter Embassy premises so that the Romanian authorities could take the three Romanian citizens into their custody. The author was never taken into custody. The press statement, issued on 22 May 2005, by the President of Romania, in which he stated that, "the three Romanian citizens and their guide had been delivered to the authority of the Romanian Embassy", should be understood as a simple message of reassurance to the Romanian people and the term "authority" should not be considered in its legal sense or equated with "custody". This is supported by another line in the same press statement which stated "the Romanian authorities have taken over *the custody of the Romanian citizens* and are guaranteeing their security until their return home." (emphasis added) The State party refers to a decision of the European Court of Human Rights to demonstrate that the author has failed to invoke any principle of international law, according to which he could be considered to fall under Romanian jurisdiction on the sole basis that Romania formed part of a multi-national coalition, when security in the zone in which the alleged actions took place was assigned to the U.S. and the overall command of the coalition was vested in the U.S.<sup>8</sup>.

4.14 The State party submits that the author is not a victim within the meaning of article 1 of the Optional Protocol, as his allegations are derived from assumptions about possible future events, which had not even begun at the time the author left the Embassy. The State party reiterates that at the time the author left the Embassy, the author was not subject to any criminal procedure in Iraq and there was no arrest warrant issued against him by the MNF-I. As a general rule, a State party is not required to guarantee the rights of persons within another jurisdiction and violations of the Covenant may occur where an individual in similar circumstances is handed over *only* if at that moment the State could establish a risk of a violation – a necessary and foreseeable consequence<sup>9</sup>. In this case, the facts at the origin of the communication – the criminal procedure in Iraq, the preventive detention in the custody of MNF-I and the death sentence – started after the alleged handing over, independently of the alleged actions of the State party.

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<sup>8</sup> Issa and others v. Turkey, Application no. 31821/96.

<sup>9</sup> *A.R.J. v. Australia*, Communication No. 692/1996, Views adopted on 28 July 1997.

4.15 The State party submits that the communication is inadmissible for lack of substantiation, as the author fails to demonstrate either how his alleged handing over to the MNF–I determined the subsequent course of events and or where the causal link lay between this handing over and his future situation. It has not been demonstrated how his current detention is arbitrary, and he has provided no evidence to support his claim that he has been tortured and/or ill-treated in detention. Indeed, claims of ill-treatment have been contradicted by the findings of the Romanian prosecutors who met him in Baghdad. The State party submits that the author has failed to show how its alleged actions affected his right to a fair trial. He has benefited from legal representation and has exercised the right to review. The State party submits that, contrary to what the author alleges, it would appear from paragraph 3 of the Iraqi law on criminal proceedings that the victims' attitude or the attitude of the victim's State party exercises no influence on the initiation, development or cessation of criminal proceedings, and that the author was sentenced to death having taken into consideration the seriousness of his actions and irrespective of any authorisation from the victims or their State of origin.

4.16 On the issue of exhaustion of domestic remedies, it is submitted that despite several meetings with Romanian prosecutors, the author never mentioned that he had been ill-treated by Romanian members of the multinational force. On the contrary, he expressly declared that he had no claim against the State party's authorities. He was assisted by a lawyer chosen by his family, and at no time did this lawyer draw the attention of the Romanian prosecutors, or any other Romanian authorities, to possible signs of violence. The State party's judicial authorities can examine and prosecute criminal charges against the Romanian members of the multinational forces, *ex officio* or upon request. In addition, the author failed to offer the State party the possibility of redressing the alleged violation of his right to a fair trial with respect to the question of the U.S. Lieutenant's claim to authorisation, as he did not request the Iraqi courts to question the Romanian authorities about the existence and the limits of this authorisation. The State party was not officially notified about this authorisation nor requested to intervene. The lawyers of the author's sister requested, through the State party's Washington Embassy, the State party's intervention in the criminal proceedings in Iraq, but this request did not come from an official authority in Iraq. The Embassy did reply however that the authorisation referred to did not exist and that this response could be used in the criminal proceedings, in order to determine an official request coming from the Iraqi courts. There was no legal way for the State party to have access to the procedure or to the author's file in Iraq, and the only other option was to publicly present its position, which it did through the media.

4.17 Finally, the State party submits that the communication is inadmissible for an abuse of the right of submission, as it was lodged before the Committee almost one and a half years after the author was sentenced to death by the Iraqi judicial authorities, although he was aware of the risk of such a sentence from the beginning of the trial. It also submits that the communication was filed because counsel's demand to the Romanian Embassy in Washington to make a formal statement to the Iraqi courts that Romania opposed the imposition of the death penalty, was not acceded to.

#### **Author's comments**

5.1 On 21 May 2007, counsel for the author commented on the State party's submission. On the validity of the power of attorney, counsel submits that at all times relevant to the drafting and

submission of the complaint, the author was detained at 'Camp Cropper' and was denied access to U.S. counsel, and access to his family and his Iraqi counsel was limited. As a result, he has been unable to submit a complaint on his own behalf or to directly appoint current counsel to submit a complaint on his behalf. It is for this reason that the author's sister filed a power of attorney to act on his behalf.

5.2 On the issue of territoriality, the author refers to article 2 of the Covenant which imposes a duty on States parties to protect, "all persons in their territory", as well as, "all persons under their control". Thus, the State party's distinction between "authority" and "custody" is meaningless as the State party has a duty to protect the author the moment he entered the inviolable territory of the Embassy, irrespective of its *choice* not to exercise or maintain custody of him. The inaccuracy of this distinction is further elucidated in the State party's attempt to equate authority with jurisdiction: "Romania had no authority or control over the author – in other words, no jurisdiction over him."

5.3 As to the claim that the State party did not know that the author would be detained in Iraq, the author submits that the State party's own troops were members of MNF-I and participated in "the planning and initiation" of the operation that led to his release. The Romanian authorities also benefited from the help of the Iraqi Minister of Interior and of the troops under MNF-I command. The State party conducted its own investigation of the author which culminated in the initiation of criminal proceedings against him in Romania on 17 May 2005, five days before the release operation even took place. For all these reasons, the State party could not have been "surprised" that only one day after he was delivered to and relinquished from the authority of the Romanian Embassy he was confined at Camp Cropper. Referral to the CCCI for prosecution was the next logical step, and the ultimate transfer to Iraqi custody, which has not yet taken place, was also readily foreseeable.

5.4 The author reiterates that the State party made no inquiry and sought no assurances before allowing U.S. officers to remove him from the Embassy. As to the argument that the Embassy never authorised the U.S. Lieutenant to act on its behalf, the author submits that the State party has never appeared before the CCCI to correct this untruth. Nor has it made any statement to the Iraqi Court of Cassation, which will hear his appeal, in this regard. The State party has failed to take such action even though it may be all that is necessary to prevent the author's execution. As a State party to the Second Optional Protocol, the author submits that it must be required to take such minimal steps to protect those removed from its territory.

5.5 On the issue of exhaustion of domestic remedies, as the author was removed from the reach of the Romanian judicial system, there were no domestic means for him to challenge the State party's failure to prevent his removal. His ongoing detention continues to prevent him from pursuing such a course. Through his counsel, the author requested executive intervention by the State party, but the Government failed to respond. As to the timing of the submission of his communication to the Committee, the author submits that since his detention on 23 May 2005, he has had very limited access to anyone outside of that facility. The facts stated in the communication were not fully available to the author's family or his U.S. counsel until shortly before the complaint was submitted. Once these facts came to light, additional time was required to pursue the availability of domestic remedies in the form of requests for executive intervention by Romania. As to the claim that counsel's attempts to obtain executive intervention of the State

party on behalf of the author before submitting the communication to the Committee indicates that the ultimate filing of the complaint was an abuse of the right of submission, the author submits that all of the correspondence between his counsel and the Embassy in Washington was included in the complaint and he was entirely forthcoming. Counsel requested executive intervention to discharge his ethical obligation to preserve his client's life and integrity. The communication was delayed on two occasions to allow the State party to take action to assist the author. Further delays were thought to be impossible for the preservation of the author's life and integrity.

### **Supplementary submission on admissibility**

6.1 On 18 January 2008, the State party provided the Committee with three note verbales. Two of them are dated 23 November 2007 and were sent by the Romanian Embassy in Baghdad to the Ministry of Foreign Affairs of the Republic of Iraq and to the Multinational Force Iraq, respectively. Both of these note verbales referred to the recent (no dated provided) decision of the Iraqi Court of Cassation, which apparently confirmed the author's death sentence, reiterated its opposition to the death penalty (see para. 1.2 above), and expressed its expectation that the Court of Cassation would have overturned rather than confirmed the death sentence. To the Republic of Iraq, the State party additionally requested the Iraqi authorities to review its decision in order to protect the life and integrity of the author and to the Multinational Force the State party considered it appropriate that the author remain in its custody. The third note verbale, dated 30 November 2007, is a response from the headquarters of the multinational force, indicating that the author remains in its custody pursuant to a US Federal Court order, issued for reasons unrelated to his sentence and that following the "resolution of his case" MNF-1 will follow whatever lawful instructions it receives from the CCCI. It states that its role is a limited one and that it does not interfere with an Iraqi judge's decision to impose a sentence under the authority of a properly constituted, sovereign court.

6.2 On 10 March 2008, in light of newspaper reports that the original decision of the Central Criminal Court of Iraq against the author was reversed, the Special Rapporteur requested clarification from the State party on the current status of this case and information on the author's whereabouts. He also requested a translated copy of paragraph 3 of the Iraqi law on criminal proceedings, referred to in the State party's submission of 5 March 2007, which is alleged to invoke that the victims' attitude or the attitude of the victim's State party exercises no influence on the initiation, development or cessation of criminal proceedings. On 19 March 2008, the State party responded that the view expressed in its submission of 5 March 2007 is an inference from the provisions of paragraph 3 (reproduced *ad litteram* in annex 14), according to which a criminal proceeding, "can only be set in motion on the basis of a complaint from the aggrieved party or someone taking his place in law" in relation to a certain number of offences listed exhaustively in subparagraph A. The offences for which the author was sentenced do not appear in that list, which implies that, other than in these cases, the initiation of criminal proceedings is *ex officio*. Thus, the initiation of proceedings is not conditional on the victim's attitude or the attitude of the victims' State, as implied in the complaint submitted on behalf of the author. The State party also confirmed the media reports that the Iraqi Supreme Court actually annulled the judgement of the lower courts against the author, a decision which the State party took note of with satisfaction. According to the public information available, the Supreme Court considered that the absence and loss of certain evidence prevented the author from benefiting from all the

guarantees of a fair trial. In the State party's view, this decision reflects the fairness of the proceedings before the Iraqi authorities and removes the concern that the death penalty will be carried out.

6.3 On 27 March 2008, the State party submitted a copy and translation of a note verbale dated 11 March 2008, from the Iraqi authorities to the State party, which confirmed that the "Federal Cassation Court has decided to cancel the court sentence against the accused person (Mohammed Munaf) and return the case to the specialized court for further investigation procedures with him. This is in order to know his role in the case and register the statement of the kidnapping journalists on their behalf. It is decided to have the mentioned person detained until finalizing the case and issuing the final decision."

#### **Admissibility decision \***

7.1 During the ninety-second session (March/April 2008), the Committee considered the admissibility of the communication.

7.2 The Committee noted the State party's argument that the power of attorney provided by the author's sister to counsel authorizing him to act on the author's behalf was inadequate and that counsel had therefore no standing to act on his behalf. It observed that the author had been detained since the submission and registration of the communication and that there is written evidence provided by the author's sister granting counsel authority to act on her brother's behalf. The Committee referred to its prior jurisprudence<sup>10</sup>, as well as to Rule 90 (b) of its Rules of Procedure, in accepting the legitimacy of authorization in such circumstances. It found, therefore, that the author's representative did have sufficient standing to act on his behalf and that the communication was not considered inadmissible for this reason.

7.3 As to the State party's arguments on the issue of exhaustion of domestic remedies, the Committee noted that the author had been detained in Iraq since the submission of his communication, and that he had taken the only action known to his counsel to seek a remedy through a request for executive intervention. The State party had not shown any means through which application to its own courts could have procured relief in respect of his claims. The Committee notes the argument that for the purposes of exhausting domestic remedies relating to

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhango, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

An individual opinion co-signed by Committee members Mr. Ivan Shearer, Sir Nigel Rodley and Mr. Yuji Iwasawa and a separate opinion signed by Committee member Mr. Walter Kälin are appended to the present decision.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Ms. Iulia Antoanella Motoc did not participate in adoption of the Committee's decision.

<sup>10</sup> Communication No. 1033/2001, *Nallaratnam Singarasa v. Sri Lanka*, Views adopted on 21 July 2004.

the unfair trial claims before the Iraqi courts, the author should have pursued the issue of the State party's authorisation, or lack thereof, in the Iraqi courts. The Committee noted that the requirement of exhaustion of domestic remedies applies in respect of the State party against whom the communication is brought, and thus, even assuming such a claim could have permissibly been advanced before the Iraqi courts, the author need not have pursued such remedies. For these reasons, the Committee considered that it had not been shown that the author had domestic remedies to exhaust, within the meaning of article 5, paragraph 2 (b) of the Optional Protocol.

7.4 As to the argument on abuse of the right of submission, the Committee did not consider that a delay of one and a half years from the material facts of a case, particularly where those include the imposition of the death penalty, amounted to undue delay, nor did it consider that the subsequent submission of a communication to this Committee following several attempts to seek redress through the executive branch of the State party amounted to such abuse. The Committee thus did not consider that the communication was inadmissible for this reason.

7.5 The Committee noted the remaining arguments from the State party: that the author was neither in its territory nor subject to its jurisdiction; that he should not be considered a "victim" for the purposes of article 1 of the Optional Protocol; and that the claims are insufficiently substantiated, as they are based on events none of which had taken place at the time the author was removed from the Embassy and of which the State party could accordingly not have been aware. It also noted the argument that such events were not the necessary and foreseeable consequences of his removal from the Embassy, and that the necessary causal link was thus absent. It recalled its prior jurisprudence<sup>11</sup> that a State party may, in principle, be responsible for violations to the rights of an individual by another State if the necessary and foreseeable consequence of the removal of that individual from its jurisdiction is a violation of their rights under the Covenant. It noted in this respect that, relevant to these issues, the State party had already initiated domestic criminal proceedings against the author on the basis of his presumed involvement in the same incident, which is the subject matter of the present communication, and had been involved in the planning and initiation of the mission to secure the hostages' release. In conclusion, the Committee's view was that all these issues are intimately connected to the merits of the case and would be best fully resolved at that stage of the communication.

8. Accordingly, on 2 April 2008, the Committee declared the communication admissible and requested the State party to provide written explanations or statements clarifying the matter, and indicating the measures, if any, that may have been taken by the State party. In this respect, the State party was, in particular, requested to provide in detail the extent of its knowledge or reasonable suspicion of the author's alleged criminal conduct, the extent to which other States or authorities were aware of same, and the State party's consideration, with any other State or authority, of how the author's responsibility for such conduct was to be resolved.

### **State party's submission on the merits**

9.1 By submission of 8 January 2009, the State party stated that, on 24 April 2008, the Court of Appeal of Bucharest sentenced the author to 10 years of imprisonment for crimes committed

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<sup>11</sup> See *Judge v. Canada*, *supra*, and *A.R.J. v. Australia*, *supra*.

on the territory of the State party, namely the crime of “constitution of and participation in terrorist groups, financing terrorist acts and complicity in terrorist activities.” The State party’s authorities are looking into the different possibilities to ensure the enforcement of this sentence against the author given his continued detention in Iraq.

9.2 On the Committee’s admissibility decision, the State party argues that the Committee deferred its consideration of admissibility, in particular, as it concerns the jurisdictional issue having decided to consider these arguments in the context of the merits. It requests the Committee to revise its decision on admissibility provided for under rule 99, paragraph 4, of the Committee’s rules of procedure.

9.3 The State party reiterates its earlier arguments that the author has not been subject to the State party’s jurisdiction since he left Romania on 15 March 2005. He has not been under the “power or effective control” of the State party, as required by General Comment 32 on the nature of the general legal obligation imposed on States parties to the Covenant. According to the State party, since the general rule dictates that the jurisdiction is territorial and only, exceptionally, extra-territorial, for the exception to be applicable it must be proven that there is a causal link between the action of the agents of a State and the subsequent alleged acts. Thus, for the responsibility of the State party to be engaged it should be demonstrated that the author was under the power or effective control of the Romanian authorities and that there was a causal link between the Romanian agents and the alleged violations invoked.

9.4 The State party provides detailed information on the nature of the MNF-1, the role of the Romanian troops within this multinational force and the general attribution of responsibility under international law of the MNF-1 under international law. It submits, *inter alia*, that according to the official site of the MNF-1, since 2003, Romania has deployed 5.200 troops in support of the Operation Iraqi Freedom. The troops were assigned to two different multi-national divisions, Centre South and Southeast. It reiterates that Romanian personnel did not have access to the detention centre in Camp Cropper, except for those providing medical treatment. It refers to a reply of the UN Secretariat on the issue of attribution of responsibility of peacekeeping forces at the request of the International Law Commission<sup>12</sup> to demonstrate its proposition that even if the MNF-1 was to be considered in the same terms as an UN peacekeeping mission, it is indisputable that the Romanian troops were never vested with effective command or control so as to be internationally responsible for the acts of MNF-1. It also refers to decisions of the European Court of Human Rights<sup>13</sup> to support the same argument. Moreover, the State party was not in a position to secure the respect for the rights defined in the Covenant in the territory of Iraq, as the responsibility to secure those rights was vested in Iraq, as a sovereign State. There is no principle under international law that would have placed the author under the jurisdiction of

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<sup>12</sup> The reply is cited by Lord Bingham of Cornhill in [2007] UKL 58 on appeal from [2006] EWCA Civ 327, Opinions of the Lords of Appeal for Judgement in the Cause R vs. Secretary of State for Defence.

<sup>13</sup> *Behrami and Behrami v. France* (dec.) [GC], no. 71412/01 and *Saramati v. France, Germany and Norway* (dec.) [GC], no. 78166/01 (joined cases), and Decision of the admissibility of application no. 23276/04 by Saddam Hussein against Albania, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Turkey, Ukraine and the UK.

Romania on the sole basis that it contributed troops to a multinational coalition, when security in the zone in which the alleged actions took place was assigned to the US and the overall command of the coalition was effectively vested in the US.

9.5 The State party reiterates that the author was not under its jurisdiction following his release by the MNF- 1 force with the other three hostages on 22 May 2005. From 28 March 2005 until 22 May 2005, he was considered by the Romanian authorities as a victim. Even though, after investigating the circumstances of the author and journalists departure to Iraq, the Romanian authorities had some suspicions that he was involved on the territory of Romania in criminal acts related to terrorism, they had no reason to believe that he was not a prisoner in the hands of a terrorist group with the Romanian journalists. In addition, the State party's suspicions only related to the acts which occurred on Romanian territory before the departure of the four individuals to Baghdad. What subsequently transpired in Baghdad could not have been considered a direct consequence of those acts, as it was objectively impossible to test the seriousness and authenticity of the terrorists claims. There was no reason to doubt the seriousness of the terrorists' threats that they would execute all four hostages and until their release the Romanian authorities feared that the author had been executed. The State party submits that the MNF-1 is not replacing the Iraqi authorities but helps to maintain peace and security in Iraq. Therefore, it did not have the authority to deliver the author, who was not a Romanian citizen, to the Romanian authorities if they so requested. The final authority in this regard was vested in the Iraqi authorities, in relation to which international law provisions on extradition law apply.

9.6 The State party reiterates that the author was not under its jurisdiction by virtue of his brief presence at the Romanian Embassy. He was not forcibly removed from the embassy and there was no risk at the time of departure that his rights would be violated. His representatives admitted in the writ of certiorari, which they filed before the Supreme Court of the United States that the author himself asked to be taken to the US embassy. Thus, his departure was an act of free will, at his request and not a measure imposed upon him by the MNF-1 forces or by the Romanian authorities. The author did not seek the protection of the Embassy through, for example, a request for asylum. While the State party recognizes that it has an obligation to protect, it refers to the Committee's jurisprudence in cases of extradition, expulsion or refoulement, in which the analysis of the potential risk that a person could suffer in the jurisdiction of return is made on the basis of the elements available to the State party at the time of transfer. However, at the time of the author's request to be taken to the US embassy, neither the Iraqi authorities nor the MNF-1 manifested any intention of arresting and prosecuting the author on any charges. Given the principle of presumption of innocence, it is also speculative to accuse the Romanian authorities of knowing, even before the initiation of any procedure against the author in Iraq that, he was guilty, would be convicted and would subsequently be sentenced to death. Upon his departure from the Embassy, the State party's authorities believed that he would be submitted to a debriefing procedure by the MNF-1 and were not aware that he would subsequently be interned in Camp Cropper for "imperative reasons of security". It was only during the debriefing that evidence of the author's involvement in the kidnapping came to light. His detention was reviewed by a MNF-1 Tribunal of three-judges, during which the author was present and had an opportunity to make a statement and call available witnesses.

9.7 On the issue of the presence before the CCI of an American officer alleged to have claimed that he represented Romanian authorities, the State party reiterates that at no time did it empower any person to represent it before the Iraqi courts, as it was not a party to those proceedings. This is clear from the Supreme Court's decision overturning the author's conviction, which only refers to the Romanian victims – the three journalists – as former parties to the proceedings and contains no mention of Romania. In addition, no provision in Iraqi criminal law links prosecution and conviction of an individual to the express consent of the victim. As the author's representatives before the US Supreme Court admitted, "The Government of Romania has repeatedly denied it authorized Lieutenant Pirone to speak on its behalf." The alleged letter which is said to have authorised the officer to act on the State party's behalf, as admitted by the author's representative, is not part of the court record, neither the author nor his counsel has seen it, and they have been unable to enquire into the circumstances under which it was purportedly obtained. No official role was attributed to this officer and his opinion was not decisive for the court findings. In addition, the author has failed to indicate the provisions that link his conviction to the State party's express request.

9.8 The State party underlines that, as it is not involved in the procedures before the MNF-1 nor the procedure before the Iraqi courts, it has no knowledge of the information available to other States authorities of the author's alleged criminal conduct and, therefore, finds it impossible to provide more detail than it did on the last two questions addressed to it by the Committee. In spite of repeated efforts, the Romanian authorities have not received the necessary cooperation from the Iraqi authorities in the author's case, a fact which it can only regret.

9.9 On the merits of the claim under article 6, the State party submits that the so-called "removal" was in fact the direct effect of the author's wish to go to the US Embassy, at a time when neither the Romanian Embassy nor the author could foresee that the MNF-1 Tribunal would decide to intern him and refer his case to the CCCI for criminal proceedings. If the author had known of these developments he would surely have asked for, at least, humanitarian protection. Several facts had not emerged at the time of his departure: the MNF-1 only considered that he was involved in the kidnapping after his debriefing; the MNF-1's decision was not final, as the Tribunal had to order his arrest and decide if he threatened, by his conduct, national security; and the Tribunal referred the case to the CCCI but his conviction was not the unconditional result of his departure from the Embassy, as he could have been found beyond any suspicion of having committed any crime and released. The State party denies that it failed to protect the author by refusing to act before the Iraqi court and denies the issue of any authorization in favour of an American officer to support his conviction. The State party's position was one of constant and public denial. However, the author did not show why he or his lawyer, as parties to the procedure, could not have requested the Iraqi court to clarify this aspect.

9.10 On the claims under articles 7 and 10, the State party submits that no evidence was produced to substantiate this claim, apart from a secondary source of testimonial evidence which remains uncorroborated and was flagrantly contradicted by the finding of the Romanian prosecutors who met the author several times during his detention in Bagdad and by his wife, who confirmed to the Romanian authorities that her husband was "doing pretty well". In fact, before the US Supreme Court, the author had requested not to be transferred into Iraqi custody, as in such places of detention there would be a risk of ill-treatment. The author did not make any

reference before the US courts of the ill-treatment he is alleged to have suffered in Camp Cropper.

9.11 As to conditions of detention in Iraqi prisons, the State party notes that the US Supreme Court found that no real risk of torture is present, based on the State Department's Reports of the human rights situation in Iraq. Although these reports admit that in some detention facilities under Iraqi custody the human rights situation raises concerns, the Iraqi Ministry of Justice meets international standards of treatment of detainees in its penitentiaries, and the author, if transferred, will be placed in one such location. The State party attaches due importance to the findings of the US Supreme Court, as it is best placed to evaluate the personal risk that an American citizen is subjected to ill-treatment. As to the issue of the manner in which the death penalty is carried out in Iraq, the State party considers that nothing in its conduct led to this situation and emphasizes that the discussion is a speculative one in any event as the Iraqi Supreme Court annulled the death sentence and called for a new investigation and a new trial that could have a different outcome.

9.12 On article 9, the State party refers to its version of the facts and its argument that the author left the Embassy of his own free will accompanied by members of the multinational force to the Embassy of his State of citizenship. It notes that the US Supreme Court considered that the MNF-1 Tribunal of three judges ensured all necessary guarantees, including the legality and non-arbitrary nature of his arrest and detention. Moreover, this issue was not brought up by the author before the US Courts until the appeal stage.

9.13 On article 14, the State party refers to the Law on Criminal Proceedings in Iraq to demonstrate that the procedure meets the general requirements for a fair trial. It refers to its previous remarks on the alleged role of an American officer (paragraph 9.7), as well as the fact that the Iraqi Supreme Court, which reviewed the author's death sentence, afforded the benefit of the doubt to the author. The Iraqi Supreme Court vacated the author's death sentence, as the victims' testimonies and the testimony of one of the accused were missing, and the sentence did not reflect the ultimate character of the crime. No mention was made of the issue of the authorization allegedly delivered to the American officer by Romanian authorities. No evidence was provided by the author on the other allegations, including no copy of his request to cross-examine witnesses, to contact his American counsel or to be granted time and facilities for his defence. Not even a copy of his appeal against his death sentence was provided. For these reasons, the State party considers that the author has failed to substantiate these allegations.

#### **Author's comments on the State party's submission**

10.1 On 12 March 2009, the author maintained that he was within the "power or effective control" of the State party during his time in the Romanian Embassy. It was the State party's own choice to treat the author differently from the other three hostages. The State party's argument that the MNF-1 did not have "the necessary authority to deliver Mr. Munaf...to the Romanian authorities if they so requested", has no basis in fact, as the State party never requested to retain custody of him. The argument that the MNF-1 had different authority over the author, as he is not a Romanian citizen as compared to the other three hostages is not supported by any UN resolution or other decision or document. The author submits that the difference in treatment was due to the State party's deliberate choice not to request or retain his custody. He

submits that the fact that he is not a Romanian citizen does not shield the State party from its duty to protect him. He admits that at the time of departure from the Embassy, he had no reason to believe that he was in any danger and had no reason to seek the State party's protection. However, the protection of fundamental rights is an absolute one and it must be acknowledged that the absence of an affirmative request for protection from a violation does not exonerate the State party.

10.2 According to the author, at the time of his removal from the Embassy, the State party had information that should have led it to the conclusion that there was a real risk that his rights under the Covenant would be violated, thereby triggering at least an inquiry into where he would be taken and what might happen to him. The author notes that the State party's argument that it was only suspicious of the author's involvement in criminal activity on the territory of Romania is inconsistent with its earlier admissibility submissions, in which it submitted that it had information about the possibility that the author was involved in the preparation of the kidnapping and the fact that criminal proceedings were instituted against him on 17 May 2005. In addition, the State party provided a memorandum signed by the Romanian Public Prosecutor which describes the investigation into the author after 5 April 2005. According to this memorandum, Romanian investigators traveled to Baghdad with the consent of the Iraqi government to hear the testimony of witnesses indicted for acts of terrorism by the Iraqi authorities, which took place between 19 and 21 May 2005 at the headquarters of the Major Crimes Unit in Baghdad. It is thus clear that the Romanian authorities were aware that the Iraqi authorities were arresting Iraqi citizens specifically. They knew that the Iraqi authorities had the same information that the State party had on the suspicions vis-à-vis Mr. Munaf and should have concluded that the Iraqi authorities would also suspect him. In addition, although the Romanian submissions are not clear on whether MNF-1 authorities were present at the witness hearings, the State party could reasonably have concluded that they were privy to any information Iraq had, and knowledgeable about Iraq's intentions with regard to Mr. Munaf.

10.3 As to the Committee's question to the State party on its consideration with any other State or authority of how responsibility for such criminal conduct was to be resolved, the author notes that the State party explains its actions in that regard only to the extent that it attempted to gain the cooperation of other authorities in its own criminal investigation and proceedings. The State party chose not to inquire and to seek no assurances regarding what would happen to the author after his removal from the Embassy.

10.4 The author refers to his conviction on 24 April 2008 by the Court of Appeal in Bucharest, on the basis of which he makes several new claims. Noting the fact that he has been detained in Iraq since 23 May 2005, he claims a violation of article 14, paragraph 3(b), as he lacked adequate time and facilities for the preparation of his defense, and a violation of article 14, paragraph 3 (d), as his trial was held in his absence.

10.5 The author acknowledges that the Court of Cassation fully supported his allegations regarding the violation of his rights under article 14 during his trial by the CCCI. On 25 January 2005, his sister received a telephone call from the author who reported that his belongings had been taken from him. After this call, the author was held incommunicado for more than four weeks, during which neither his family nor his Iraqi lawyer were permitted to speak to him. He

was transferred multiple times during this period but finally returned to Camp Cropper in the last week.

### **Author's supplementary submission**

11. On 20 April 2009, the author's counsel provided an update on the case. She states that she has been unable to contact the author directly but understands from his family that the Iraqi court has requested the assistance of the Romanian authorities in its investigation of the case. According to counsel, the Iraqi investigation judge has requested the testimony of the three Romanian journalists who had been kidnapped. Six months after the initial request, and following multiple letters to the State party's government, the latter responded offering to allow the Iraqi investigation judge to come and take the testimonies in the State party. As Iraqi rules regarding investigation and criminal procedure do not allow testimony to be taken outside Iraq, the Iraqi court requested that the three witnesses be made available to give testimony via satellite transmission from Romania to Iraq. To date the State party's government has failed to respond. Until an answer is provided by the State party, the Iraqi court cannot proceed with its investigation and the proceedings against the author will not progress. Thus, his detention which has already lasted four years will continue.

### **Supplementary submissions from the State party**

12.1 On 15 May 2009, the State party disputed the author's allegations made in his submission of 20 April 2009. It submits that the Romanian authorities have only received two letters from the Iraqi administration to which it duly responded. On 29 October 2008, the Ministry of Foreign Affairs received a request from the Iraqi judicial authorities for further information on the three kidnapped victims. In January 2009, the State party responded that to conform to the requirements of Romanian law such a request should take a certain form and include *inter alia* certain guarantees, including the assurances of reciprocity. Such requirements are necessary given that there is no international agreement between Romanian and Iraq on issues of international assistance in criminal matters. On 17 April 2009, the State party received a similar request from the Iraqi authorities to which the State party again requested *inter alia* assurances of reciprocity. The Iraqi authorities had not responded to this note verbale by the date of the submission.

12.2 On 13 May 2009, the Romanian Ministry of Foreign Affairs received another note verbale from the Iraqi Ministry of Foreign Affairs containing information pursuant to which the Central Investigation Court decided on 13 April 2009 to designate the Iraqi consular officer from the Iraqi Embassy in Bucharest to set up a rogatory commission and take the testimony of the three Romanian journalists. This note was sent to the Ministry of Justice who is considering the matter and will inform the Iraqi authorities in due course. The State party reiterates the numerous requests it has made to the Iraqi authorities for its assistance in the hearing of Mr. Munaf, including by rogatory commission, to which the Iraqi authorities responded in the negative. In addition, the State party informed the Iraqi authorities of the conviction of Mr. Munaf in Romania and requested the Iraqi authorities to consider the application of the principle of *non bis in idem* should he be investigated in Iraq for the same crimes that were the object of the criminal proceedings in Romania. To this request the State party has still not received a response. Finally, the State party denies that it informed the Iraqi authorities of the possibility of an Iraqi

investigative judge coming to Romania to take the testimony of the three Romanian journalists. Such a possibility is not envisaged under Romanian law.

12.3 On 5 June 2009, the State party responded to the author's comments of 12 March 2009. It reiterates previous arguments made on admissibility. It submits that the author has failed to substantiate the new claims of violations of article 14 by the Court of Appeal in Bucharest of 24 April 2008. The author's lawyers were aware, at least from 30-31 May 2005, that proceedings were initiated against the author in the State party and they could have requested information from the author's sister or his lawyers in Romania for information on his case. In its submission of May 2007, the State party itself referred to these proceedings. Thus, it submits that the author's failure to make these claims only two years after being informed of the facts relating to them is an abuse of the right of submission to the Committee. It also claims that the author has failed to exhaust remedies, as he did not appeal to the Court of Appeal of Bucharest, despite the fact that he was given additional time in light of his conviction *in absentia*. It also submits that the author still has recourse to one of the extraordinary means of appeal in the State party.

12.4 The State party clarifies its earlier argument that the fact that there was no specific request from the author for protection did not imply that he was in any way at fault by not doing so but that, apart from the issue of whether the State party should have presumed a future violation of his rights, there were no other circumstances which would have entailed a responsibility to react on the part of the Romanian authorities. The State party submits that the claim that Romania had information that should have led to the conclusion that there was a real risk of a violation of his rights remains unproven and a mere hypothesis. The State party submits that it never contested that some of the alleged preparatory and executive acts, which led to the kidnapping, were carried out on Romanian soil but merely clarified that the investigations carried out on the part of the Romanian authorities related only to those preparatory and executive acts that were carried out in the State party. The State party's authorities could not have investigated what had happened on Iraqi territory. In any event, the arrests carried out by Iraqi authorities did not necessarily imply the automatic guilt of the author and could equally have ended with a finding of insufficient evidence to pursue the case.

12.5 As to the argument that the State party should have requested the Iraqi authorities or MNF-1 on how it intended to proceed with the author, the State party reiterates, that, at the time, it was of the view that MNF-1 intended to subject the author to a debriefing procedure which would take place in the US Embassy. This was confirmed by the US Supreme Court in its decision of *Munaf v. Geren*<sup>14</sup>. The State party submits that it made known its position to both MNF-1 and to the Iraqi authorities, and on 28 May 2009, it had made a further request to the Iraqi authorities to review its policy on the death penalty with a view to abolition.

## **Issues and proceedings before the Committee**

### **Review of admissibility**

13.1 Prior to considering the merits of the case, the Committee notes that the author formulates new claims in his submission of 20 April 2009 after the Committee's decision on admissibility. The Committee observes that these claims relate to the conduct of the criminal proceedings

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<sup>14</sup> 553 US (2008), AT P.10-11.

against him before the Court of Appeal on 24 April 2008. It notes that the State party contests these claims, *inter alia*, for failure to exhaust domestic remedies, as the author did not appeal his conviction despite the extension of the time-limit in this regard. While noting that the author himself was and remains detained in Iraq, no reasons have been provided explaining why he could not have assigned his Romanian lawyer to pursue an appeal on his behalf. The Committee considers that the author has failed to show that he has exhausted domestic remedies with respect to his new claims, and thus finds this part of the communication inadmissible, pursuant to article 5, paragraph 2(b), of the Optional Protocol.

13.2 As to the State party's request in its submission on the merits to review the admissibility of the entire communication, the Committee reiterates its view set out in the admissibility decision that the author's arguments should be analysed in the context of the consideration on the merits of the case.

13.3 The Committee refers to its decision on admissibility, in which it considered that some of the inadmissibility arguments are intimately linked to the merits and should thus be considered at that stage. The Committee made this assessment *inter alia*, on the basis of the serious allegations made by the author, the contradictions between the State party and author on several questions of fact and the absence of sufficient information about the extent of the State party's knowledge of the author's alleged criminal conduct. The Committee recalls that it addressed further questions to the State party in its admissibility decision, to which both the State party and the author have had further opportunities to respond.

### **Consideration of the merits**

14.1 The Human Rights Committee considered the communication in the light of all the information supplied to it by the parties, as it is required to do under article 5, paragraph 1, of the Optional Protocol.

14.2 The main issue to be considered by the Committee is whether, by allowing the author to leave the premises of the Romanian Embassy in Baghdad, it exercised jurisdiction over him in a way that exposed him to a real risk of becoming a victim of violations of his rights under articles 6, 7, 9, 10, paragraph 1 and 14 of the Covenant, which it could reasonably have anticipated. The Committee recalls its jurisprudence that a State party may be responsible for extra-territorial violations of the Covenant, if it is a link in the causal chain that would make possible violations in another jurisdiction. Thus, the risk of an extra-territorial violation must be a necessary and foreseeable consequence and must be judged on the knowledge the State party had at the time: in this case at the time of the author's departure from the Embassy.<sup>15</sup>

14.3 While there is disagreement about some of the facts of the case, the following is agreed by both parties: the author was brought to the embassy, where he remained for a few hours; he specifically requested to go to the US embassy on account of his dual citizenship; and he was unaware himself at the time that he might subsequently be charged with a criminal offence in

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<sup>15</sup> *A.R.J. v. Australia*, Communication No. 692/1996, Views adopted on 28 July 1997, *Judge v. Canada*, Communication no. 829/1998, Views adopted on 5 August 2002 and *Alzery .v Sweden*, Communication 1416/2005, Views adopted on 25, October 2006.

Iraq and thus might have needed the protection of the State party. The latter point has been confirmed in the author's comments on the merits (paragraph 10.1).

14.4 Given both the State party's and author's responses to the questions addressed by the Committee in its admissibility decision, it is clear that the State party was involved in the initiation and planning stage of the operation to release the hostages, and that the author had been charged (and ultimately subsequently convicted) of having committed criminal offences in the State party's territory, offences which related to the kidnapping in Iraq itself. The author argues that the Iraqi administration had provided some assistance to the State party with respect to the latter's investigation of the author for crimes committed in Romania. He argues that, as a result of this cooperation, the State party should not have been "surprised" (paragraph 5.3) to learn that the author was charged the day after his departure. However, the Committee does not consider that "surprise" can be equated with knowledge, on the part of the State party, that violations of the Covenant were a necessary and foreseeable consequence of his departure from the Embassy. Nor does it consider that all of this information, even looking at it in its totality, proves or even suggests that the State party would or should have known, at the time of the author's departure, that criminal proceedings would subsequently be initiated against him in Iraq. Nor could it have known that the initiation of such proceedings would have run a real risk of him, being convicted in circumstances contrary to article 14, ill-treated contrary to article 7 and/10, being sentenced to death, contrary to article 6, and ultimately executed, in a manner contrary to article 6, paragraph 2.

14.5 The Committee notes that at the time of his departure from the embassy, the State party was of the view that the author would merely take part in a de-briefing procedure and had no reason to deny his specific request to go to the US embassy, in particular given his status as a dual national. The Committee considers that the author's claims that the State party knew otherwise were, and in fact remain, speculative. In this regard, the Committee notes that even since the submission of the communication, the author is no longer under a sentence of death in Iraq, his conviction and sentence having been annulled awaiting further investigation. In addition, by annulling his appeal, the author acknowledges that the Court of Cassation addressed his claims under article 14, concerning the criminal proceedings before the Central Criminal Court of Iraqi. In the Committee's view, the fact that the proceedings against the author have not yet been completed, and that upon review at least some of his claims have been addressed, lends further support to the State party's argument that it could not have known at the time of the author's departure from the Embassy that he ran a risk of his rights under the Covenant being violated.

14.6 For the abovementioned reasons, the Committee cannot find that the State party exercised jurisdiction over the author in a way that exposed him to a real risk of becoming a victim of any violations under the Covenant.

15. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not reveal a breach of any articles of the Covenant.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

## APPENDIX

### **Dissenting opinion on the Admissibility Decision of Committee members, Mr. Ivan Shearer, Sir Nigel Rodley and Mr. Yuji Iwasawa**

We are unable to subscribe to the decision to declare the present communication admissible. In our view no further facts could emerge at the Merits phase of the proceedings that could lead to an ultimate finding of a violation of the author's Covenant rights. It is wrong to place the State party under a further obligation to respond to a clearly misconceived complaint.

We limit ourselves to what we consider to be the complete absence of a territorial or jurisdictional nexus between the author and the State party, as required by article 2 of the Covenant. The establishment of such a nexus is essential before a communication with respect to that State is admissible.

The facts relevant to this aspect of the case do not appear to be in dispute. The author was brought to the Romanian Embassy in Baghdad together with the other freed hostages by officers of the Multinational Force (MNF-1). The three freed hostages remained in the embassy in order for arrangements to be made to repatriate them to Romania. Mr Munaf, who is a dual Iraqi-US national, left the embassy in the company of MNF-1 requesting that he be taken to the US Embassy. Mr Munaf did not request the protection of the Romanian embassy by way of asylum or express a desire to remain there. There is no evidence that he left the embassy otherwise than voluntarily. It was only on the following day that Mr Munaf was detained by the MNF-1 on suspicion of having committed an offence.

It can only be concluded, in our view, that the present communication has been artificially constructed as a complaint against Romania, a party to the Optional Protocol, in order indirectly to draw attention to alleged violations of the Covenant by Iraq and the United States. Neither of the latter States are parties to the Optional Protocol and thus the author would be precluded from bringing proceedings against them before the Committee.

*[signed]* Mr. Ivan Shearer

*[signed]* Sir Nigel Rodley

*[signed]* Mr. Yuji Iwasawa

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

**Dissenting opinion on the Admissibility Decision of Committee member Mr. Walter Kälin**

I am not in a position to join the majority declaring the present communication admissible. In my view the facts of the case, albeit disputed to some extent by the parties, are clear enough to allow the conclusion that the communication should have been declared inadmissible.

The state party claims that the author has neither been within its territory nor subject to its jurisdiction since 15 March 2005, when he left the State party to go to Iraq. It also maintains that while the author was brought to the Romanian Embassy he never left the custody of MNF-I and was not handed over to Romania.

Indeed, the key question in the present case is whether Romania exercised any jurisdiction over the author. The point of departure for examining this issue is article 2 of the Covenant, according to which a State party undertakes to, “respect and to ensure to all individuals *within its territory and subject to its jurisdiction* the rights recognised in the present Covenant...”, as well as article 1 of the Optional Protocol allowing the Committee to “receive and consider communications from individuals *subject to its jurisdiction*” (emphasis added). Accordingly, the Committee has described “individuals subject to its jurisdiction”, as not referring to the place where the violation occurred, but rather to the relationship between the individual and the State, in relation to a violation of any of the rights set forth in the Covenant<sup>16</sup>. This position was confirmed and further explained in the Committee’s General Comment No. 31, where the Committee clearly set out that “a State party must respect and ensure the rights laid down in the Covenant to anyone within *the power or effective control* of that State Party, even if not situated within the territory of the State Party” (emphasis added). It went on to say that the enjoyment of Covenant rights is not limited to citizens of States parties and the principle also applies to those within “the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State Party assigned to an international peace-keeping or peace-enforcement operation.” Thus, the test is not, as argued by the State party, whether it had “custody of” or “authority over” the author, or whether it relinquished custody of him to MNF-I, but whether it had “power or effective control” over him for the purposes of respecting and ensuring his Covenant rights.

In this regard, I accept the following facts: The release of the author and the Romanian hostages was secured during a raid by military troops under the command of Multi-National Force-Iraq (MNF-I) whose presence in Iraq was authorized by the Security Council<sup>17</sup>. As confirmed by the author, the contingent of MNF-I directly involved in securing the hostages’ release did not include Romanian troops. The State party’s involvement, as has not been contested by it, was limited to the “initiation and planning” stage of the operation. The troops carrying out the operation brought the hostages as well as the author to the Romanian Embassy in Baghdad. From there, the author was taken by MNF-I to ‘Camp Cropper’, where he has been detained since. ‘Camp Cropper’ is an MNF-I detention facility, although a facility in which, as

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<sup>16</sup>*Lopez v. Uruguay*, Communication No. 52/1979, Views adopted on 29 July 1981.

<sup>17</sup> Security Council Resolution 1511 of 16 October 2003 and subsequent resolutions extending the mandate of MNF-I.

demonstrated by the State party, there were no Romanian personnel during the period in question.

Accordingly, the present case raises three issues: *First*, it has to be considered whether alleged violations suffered by the author in the form of his detention, trial and sentence are imputable to the State party, by virtue of the State party's presence in the MNF-I. *Second*, it is necessary to examine whether by letting the author be taken away from the premises of the Embassy it exercised jurisdiction over the author in a way that exposed the author to a real risk of becoming a victim of violations of his rights under articles 6, 7, 9, 10, para. 1 and 14 of the Covenant which it may have reasonably anticipated. *Finally*, the question arises whether the State party exercised jurisdiction over the author when, subsequent to his departure from the Embassy, it allegedly declined to intervene on behalf of the author during the proceedings before the Central Criminal Court of Iraq (CCCI), an omission which, according to the author, made the violation of his rights possible.

Regarding the first question, I find that, whatever the circumstances in which a State party could be held to be exercising jurisdiction over an individual in the context of "an international peace-keeping or peace-enforcement operation", as set out in our General Comment 31, in the current circumstances the State party was not itself represented in the MNF-I contingent that secured the hostages' release. Thus, the part that the State party played in their release, through its involvement in the initiation and planning of the operation, was insufficiently proximate to bring the author within the power or effective control of the State party, prior to his arrival in the Embassy, as defined by the Covenant and Optional Protocol. The same conclusion must be drawn with respect to the author's detention by the MNF-I in 'Camp Cropper', following his removal from the Embassy, in light of the fact that no personnel from the State party was present in this detention facility during the period in question, as well as with respect to the trial before the CCCI. There is no established principle of international law which would mean that the author fell within the jurisdiction of the State party on the sole basis that it formed part of a coalition with the State that took the author into custody and controlled Camp Cropper. Thus, the author cannot be said to have been under the power or effective control of the State party after his removal from the Embassy and his subsequent detention in 'Camp Cropper'. In my view, the communication is thus inadmissible insofar it claims that the treatment of the author while in detention in Camp Cropper, the trial, and the ensuing death sentence are directly attributable to the State party and amount to violations by the State party of the Covenant.

As to the second question and the author's claims that the act of handing him over to MNF-I leading to his being sentenced to death violated his rights under the Covenant, the Committee's jurisprudence is relevant according to which States Parties have an obligation not to remove, by whatever means, individuals from their jurisdiction if it may be reasonably anticipated that they will be exposed to a real risk of being ill-treated.<sup>18</sup> The same obligation exists for a State party that has abolished the death penalty regarding a person risking the death penalty in another country.<sup>19</sup> Here, the question arises as to whether the author could be said to have been within "the power or effective control" of the State party, by virtue of his presence in

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<sup>18</sup> *A.R.J. v. Australia*, Communication No. 692/1996, Views adopted on 28 July 1997.

<sup>19</sup> See *Judge v. Canada*, Communication No. 829/1998, Views adopted on 5 August 2003, para. 10.4.

its Embassy in Baghdad. I note that, although the precise sequence of events inside the grounds of the Embassy on 22 May 2005 is contested by the parties to the case, the parties agree that (i) the author was within the premises of the Embassy, and (ii) that he was detained only subsequent to his departure from the Embassy. As a matter of international law, a State party has full legal jurisdiction over diplomatic premises and the acts of all persons therein. This is so regardless of the precise degrees of factual control that were in fact have been exercised over the individual within the premises by Embassy staff and MFN-I forces. Thus, in the course of 22 May 2005 the author can appropriately be regarded as having come, in legal terms, within the jurisdiction of the State party while at its Embassy in Iraq.

However, even if we accept that the State party exercised jurisdiction over the author while in the Embassy premises, the question remains as to whether the author has sufficiently substantiated his claim, for purposes of admissibility, that the State party was in a position to reasonably anticipate impending violations of this rights under articles 6, 7, 9, 10 and 14 of the Covenant arising from his subsequent detention, trial and sentence. In this regard, the State Party's explanation that the author requested to be taken to the U.S. Embassy as well as the fact that author never claimed to have asked Embassy staff to provide him with protection are highly relevant, as are the short period of time and the circumstances of the author's presence on Embassy premises. It is my view that under these circumstances, the author has failed sufficiently to substantiate, for purposes of admissibility, that the State party's authorities were in a position reasonably to anticipate the alleged violations of his rights under the Covenant.

The final question is whether the State party had jurisdiction over the author with regard to its alleged failure to intervene with relevant authorities during and in the aftermath of the trial before the CCCI despite such requests by his counsel. A refusal to act on behalf of a person being abroad may be a relevant exercise of jurisdiction, provided there is a genuine link between the state and the person concerned.<sup>20</sup> In the present case, the author has claimed that according to applicable Iraqi law the State party had to authorize the trial of and the imposition of the death penalty on the author because the victims were its own nationals, and thus was supposed to play a direct role in his trial. Such a legal possibility to prevent the imposition of the death penalty in a trial that allegedly violated article 14 would, in my view, be sufficient to create a genuine link between the State party and the author. I note, however, that the only article quoted by the parties to these proceedings that could be relevant is article 3 of the Iraqi Law on Criminal Proceedings requiring a request by the aggrieved party in the case of certain specified crimes. However, kidnapping is not included in the list spelled out in article 3, and the author has not referred to any other specific provision of Iraqi law to support his contention that in the present case the State party's agreement would have been necessary. Therefore, the Committee should have concluded that the author has not sufficiently substantiated, for purposes of admissibility, his claim that the State party has violated its duty under article 6 to protect his life.

[signed] Mr. Walter Kälin

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<sup>20</sup> See *Loubna El Ghar v Libya*, Communication No. 1107/2002, Views adopted on 2 November 2004.

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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