HUMAN RIGHTS COMMITTEE

A. R. J. v. Australia

Communication No. 692/1996

28 July 1997

CCPR/C/60/D/692/1996

VIEWS

Submitted by: A. R. J. [represented by counsel]

Victim: The author

State party: Australia

Date of communication: 6 February 1996 (initial submission)

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

Meeting on 28 July 1997,

Having concluded its consideration of communication No. 692/1996 submitted to the Human Rights Committee by Mr. A. R. J. 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, his counsel and the State party,

Adopts the following:

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

1. The author of the communication is A. R. J., an Iranian citizen born in 1968, at the time of submission of his communication detained at the Regional Prison in Albany, Western Australia. He claims to be a victim of violations by Australia of articles 2, paragraph 1; 6, paragraph 1; 7; 14, paragraphs 1, 3 and 7; 15, paragraph 1; and 16 of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author

2.1 The author was a crew member of a vessel of the Iranian Shipping Line and was arrested on 15 December 1993 at Esperance, Western Australia, for illegal importation and possession of two kilograms of cannabis resin, in contravention of Section 233B(1) of the Customs Act (Cth). He had tried to sell the cannabis to an undercover customs agent. He was sentenced to five years and six months of imprisonment in April 1994; the Court set a non-parole period of two years and six months, which expired on 7 October 1996.

2.2 On 13 June 1994, the author applied for refugee status and a Protection (Permanent) Entry Permit to the Department of Immigration and Ethnic Affairs. On 19 July 1994, this application was refused at first instance by an officer who represented the Minister for Immigration and Ethnic Affairs. He was of the opinion that Mr. J. did not face any real threat of persecution in Iran relevant to the applicability of the 1951 Convention on the Status of Refugees.

2.3 On 10 August 1994, the author applied for review of the decision to the Refugee Review Tribunal. The review had not been completed when, on 1 September 1994, changes to the Australian Migration Act and Migration Regulations took effect. Under the new rules, the author's application now had to be regarded as an application for a protection visa. On 10 November 1994, the Refugee Review Tribunal confirmed the original decision of 19 July 1994. The Tribunal held that the author's fear of being returned to Iran was based on his drug-related conviction in Australia, and that he had not raised any other argument that he would face serious difficulties if he were to be returned to Iran.

2.4 The Tribunal concluded: "While it has sympathy for the applicant in that should he return to Iran it is likely that he would face treatment of an extremely harsh nature, the applicant cannot be considered to be a refugee. The applicant must have a well founded fear of being persecuted for one of the reasons stated in the Convention, that is, race, religion, nationality, membership of a particular social group or political opinion. The applicant's fear does not arise for any of those reasons ... [but] solely out of his conviction for a criminal act...".

2.5 Early in 1995, Justice Lee ordered that the author's deadline for filing an application for an order of review of the Refugee Review Tribunal's decision be extended to 25 May 1995, and that an amended application which was filed on 24 May 1995 stand as an amended application for review before the Federal Court of Australia.

2.6 On 14 November 1995, Justice French delivered the judgment of the Federal Court of Australia. The judgment concluded that the author had failed to show any error of reasoning of the Refugee Review Tribunal , or any basis upon which he could be said to attract Convention protection. Nonetheless, the risk to which he might be exposed upon return to Iran was a matter of serious concern. The possibility that the author might be subjected to an unfair trial, to imprisonment and to torture were not matters to be put aside lightly in a country with a humanitarian tradition. The question of whether or not the author could be returned to another country or be permitted to remain in Australia for some time on another

basis was not, however, before the Court. The issue before the Court was whether or not the Refugee Review Tribunal had erred in finding that he did not attract Refugee Convention protection. This not being the case, the application had to be dismissed.

2.7 In the light of the Federal Court's finding, the Legal Aid Commission of Western Australia was of the view that a further appeal to the Full bench of the Federal Court of Australia would be futile, and that legal aid should not be made available for the purpose. However, the author filed a request with the Legal Aid Commission of Western Australia to make representations to the Minister for Immigration and Ethnic Affairs to exercise his discretion to allow Mr. J. to remain in Australia on humanitarian grounds.

2.8 On 11 January 1996, the author was informed by Legal Aid Western Australia that the Minister was unprepared to exercise his discretion under Section 417 of the Migration Act to allow Mr. J. to remain in Australia on humanitarian grounds. Counsel then expressed the view that it was unlikely that anything further could be done on the author's behalf.

2.9 The Guidelines for Humanitarian Recommendations provide non-exhaustive guidelines to members of the Refugee Review Tribunal and to the review Officer or to tribunal members on the exercise of their recommendatory functions. They lay down that:

- it is in the interest of Australia as a humane society to ensure that individuals who do not meet the technical definition of a refugee are not returned to their country of origin if there is a reasonable likelihood that they will face a significant, individualized threat to their personal security upon return;.

- it is in the public interest that protection offered on humanitarian grounds, which is not based on international obligations but on positive, discretionary considerations, is only offered to individuals with genuine and pressing needs;

- as a discretionary measure, the granting of a stay on humanitarian grounds must be limited to exceptional cases presenting elements of threat to personal security and intense personal hardship;

- it would not be appropriate as part of the refugee status determination procedure to address cases of a compassionate nature, such as family difficulties, economic hardship or of medical problems, not involving serious violations of human rights;

- it is not intended to address broad situations of differentiation between particular groups or elements of society within other countries;

- the Guidelines should only apply to individuals whose circumstances and characteristics provide them with a sound basis for expecting to face a significant threat to personal security upon their return, as a result of targeted actions by persons in the country of return;

- to ensure that remedies offered under this process are limited to genuine cases, one should not consider on humanitarian grounds any individuals who (a) have a safe third country to

which to go; (b) who could subsequently alleviate the perceived risk by relocation to a region of safety within the country of origin; or (c) who is seeking residence in Australia mainly to secure better social, economic or education opportunities.

2.10 It is stated that the author's case was also submitted to the Office of the UN High Commissioner for Refugees for appropriate action. There had been no reaction from this office at the time of submission of the communication to the Committee.

The complaint

3.1 The author claims that Australia would violate article 6 if it were to return him to Iran. It is said to be a fact that individuals who commit drug-related offences are subject to the jurisdiction of Islamic Revolutionary Tribunals, and that there would be a real possibility that the author may be persecuted because he was convicted of an offence which had a connection with an Iranian Government agency - i.e. the Iranian Shipping Line of which the author was an employee - and that such persecution could lead to the ultimate sanction.

3.2 It is submitted that there is a consistent pattern of the use of the death penalty for drug-related offences in Iran. The author notes that the imposition of the death penalty in Islamic Revolutionary Courts after trials which fail to meet international standards of due process violates the right to life protected by article 6 and also contravenes the Second Optional Protocol on the Abolition of the Death Penalty, to which Australia has acceded.

3.3 The author contends that his deportation to Iran would violate article 7 of the Covenant, as well as article 3 of the Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment. To surrender a prisoner knowingly to another State where there are substantial grounds for believing that he would be in danger of being tortured, while not explicitly covered by the wording of article 7 of the Covenant, would clearly run counter to its object and purpose. Reference is made to the judgment of the European Court of Human Rights in Soering v. United Kingdom[1] as well as to a judgment of the French Conseil d'Etat of 27 February 1987[2]. On the basis of information readily available in reports submitted to the UN Commission on Human Rights and in reports prepared by other governmental or non-governmental organizations, and in the light of the comments made by the Refugee Review Tribunal and by Justice French, the author's involuntary repatriation to Iran would give rise to issues under article 7.

3.4 It is claimed that if the author were to be deported to Iran, Australia would violate article 14. The nature of the offence of which the author was convicted constitutes a crime against the laws of Islam, and Islamic Revolutionary Tribunals have jurisdiction for the type of offence the author stands convicted of. It is said to be accepted that these revolutionary courts do not observe internationally accepted rules of due process, that there is no right of appeal, and that the accused is generally unrepresented by counsel. This view was shared by Justice French of the Federal Court of Australia.

3.5 The author contends that any prosecution in Iran, in the event of his deportation, would be contrary to article 14, paragraph 7, of the Covenant, since he would face the serious

prospect of double jeopardy. Therefore, his forcible deportation to Iran would, in all likelihood, amount to complicity to double jeopardy.

3.6 The author further claims violations of articles 15 and 16 of the Covenant and seeks to substantiate said allegations. Counsel seeks interim measures of protection under rule 86 of the rules of procedure on behalf of his client, who may face repatriation to Iran at any moment.

The State party's information and observations on the admissibility and the merits of the communication

4.1 In a submission dated 17 October 1996, the State party offers comments both on the admissibility and the merits of the case. As to the author's claim under article 2, it argues that the rights under this provision are accessory in nature and linked to the other specific rights enshrined in the Covenant. It recalls the Committee's interpretation of a State party's obligations under article 2, paragraph 1, pursuant to which if a State party takes a decision concerning a person within its jurisdiction, and the necessary and foreseeable consequence is that this person's rights under the Covenant will be violated in another jurisdiction, the State party itself may be in violation of the Covenant[3]. It notes however that the Committee's jurisprudence has been applied so far to cases concerning extradition, whereas the author's case raises the issue of the "necessary and foreseeable consequence" test in the context of expulsion of an individual who was convicted of serious drug offences and who has no legal basis for remaining in Australia: it cannot be said that a retrial for drug trafficking offences is certain or the purpose of returning Mr. J. to Iran.

4.2 In the State party's opinion, a narrow construction of the "necessary and foreseeable consequences" test allows for an interpretation of the Covenant which balances the principle of State party responsibility embodies in article 2 (as interpreted by the Committee) and the right of a State party to exercise its discretion as to whom it grants a right of entry. To the State party, this interpretative approach retains the integrity of the Covenant and avoids a misuse of the Optional Protocol by individuals who entered Australia for the purpose of committing a crime and who do not have valid refugee claims.

4.3 Regarding the author's claim under article 6, the State party recalls the Committee's jurisprudence as set out in the Views on communication No. 539/1993[4] and notes that while article 6 of the Covenant does not prohibit the imposition of the death penalty, Australia has, by accession to the Second Optional Protocol to the Covenant, undertaken an obligation not to execute anyone within its jurisdiction and to abolish capital punishment. The State party argues that the author has failed to substantiate his allegation that it would be a necessary and foreseeable consequence of his mandatory removal from Australia that his rights under article 6 of the International Covenant on Civil and Political Rights and article 1, paragraph 1, of the Second Optional Protocol will be violated; this aspect of the case should be declared inadmissible under article 2 of the Protocol, or dismissed as being without merits.

4.4 The State party adduces several arguments which in its opinion demonstrate that there is no real risk to the author's life if he were to be returned to Iran. It first notes that expulsion

is distinguishable from extradition in that extradition results from a request from one State to another for the surrender of an individual to face prosecution or the imposition or enforcement of a sentence for criminal conduct. Accordingly, as a consequence of a request for extradition it is virtually certain that the person will face trial or enforcement of sentence in the receiving state. On the other hand, it cannot be said that such a consequence is certain or the purpose of handing over in relation to the routine deportation or expulsion of a person. For expulsion cases, the State party submits, the threshold question should be whether the receiving state has a clear intention to prosecute the deported person. Without clear intention of an actual intention to prosecute in the first place, allegations such as those raised by the author are purely speculative.

4.5 The State party submits, still in the context of the claim under article 6, that no arrest warrant is outstanding against the author in Iran, and that the Iranian authorities have no particular interest in the author. Thus, the Australian Embassy in Teheran advised that "... [i]f the Iranians have not sought the assistance of Interpol in this case, then that is the most compelling evidence that the alleged victim will not suffer arrest or re-imprisonment on return for the drug offence. This is a view shared by all Western embassies who have dealt with such cases in the recent past".

4.6 The State party notes that it has, through its embassy in Teheran, sought independent legal advice on the specific circumstances of the author from a lawyer practicing in Iran. The advice given was that it is very unlikely that an Iranian citizen who already has served a sentence abroad for a (drug-related) offence will be retried and resentenced. The only possibility of this occurring would be where the penalty incurred abroad is considered far too lenient by the Iranian authorities; these would not consider a six year sentence as too lenient. Furthermore, the State party points out, Iranian law does not provide for the imposition of the death penalty for the trafficking of two kilograms of cannabis resin; rather, the penalty for trafficking between 500 grams and 5 kilograms of cannabis resin is a fine of between 10 and 40 million rials, 20-74 lashes and 1-5 years imprisonment. In respect of the author's argument that there is a consistent pattern of the use of the death penalty in drug trafficking cases in Iran, the State party notes that reliance on an alleged consistent pattern of resort to the death penalty is insufficient to demonstrate a real risk in the specific circumstances of the alleged victim: Mr. J. offers no evidence that he would personally be at risk of being subject to the death penalty.

4.7 The State party's own inquiries do not reveal any evidence that deportees who were convicted of drug-related offences are at a heightened risk of a violation of the right to life. Thus, the Australian embassy in Teheran has advised that it is unaware of any cases where an Iranian citizen was subjected to prosecution for the same or similar offences. The embassy was advised by another embassy, which handles a high volume of asylum cases, that it had processed several similar cases in recent years and that none of the individuals deported to Iran after serving a prison sentence in that embassy's country had faced problems with the Iranian authorities upon their return. The State party adds that other countries which have deported convicted Iranian drug traffickers have stated that none of the individuals who were so deported were subjected to rearrest or to retrial.

4.8 For the purpose of ascertaining whether there is a real possibility that the author may face the death penalty in Iran, the State party sought legal advice through its embassy in Teheran as to whether Mr. J.'s criminal record would increase his risk of being the subject of adverse attention from the local authorities. The legal advice obtained does not support this proposition. It was further advised that although the author had been arrested once previously in 1989 for consumption of alcohol and was refused work clearance at a petro-chemical plant, this does not suggest in any way that he would be rearrested upon return to Iran or subjected to additional adverse attention.

4.9 Finally, the State party argues that the author has failed to substantiate his claim that he might be subjected to extra-judicial execution if returned to Iran. It is submitted that an Iranian citizen in the author's position is at no risk of extra-judicial execution, disappearance or detention without trial during which that person might be subject to torture.

4.10 In respect of the author's claim under article 7 of the Covenant, the State party concedes that if Mr. J. were prosecuted in Iran, he might, under the Islamic penal code, be exposed to 20-74 lashes. It argues, however, that there is no real risk that the author would be retried and resentenced if returned. Accordingly, this claim is said to be unsubstantiated and without merits.

4.11 The State party argues that the author's allegation that prosecution in an Islamic Revolutionary Court would violate his right under article 14, paragraph 7, of the Covenant is incompatible with the provisions of the Covenant and should be declared inadmissible under article 3 of the Optional Protocol. In this context, it argues that article 14, paragraph 7, does not guarantee ne bis in idem with regard to the national jurisdictions of two or more States - on the basis of the travaux préparatoires of the Covenant and the jurisprudence of the Committee,[5] the State party argues that article 14, paragraph 7, only prohibits double jeopardy with regard to an offence adjudicated in a given State.

4.12 The State party argues that its obligation in relation to future violations of human rights by another State arises only in cases involving a potential violation of the most fundamental human rights and does not arise in relation to Mr. J.'s allegations under article 14, paragraphs 1 and 3. It recalls that the Committee's jurisprudence so far has been confined to cases where the alleged victim faced extradition and where the claims related to violations of articles 6 and 7. In this context, it refers to the jurisprudence of the European Court of Human Rights in the case of Soering v. United Kingdom, where the Court, while finding a violation of article 3 of the European Convention, stated in respect of article 6 [6] that issues under that provision might only exceptionally be raised by an extradition decision in circumstances where the fugitive has suffered or risks suffering a flagrant denial of due process in the requesting state. In the instant case, Mr. J. asserts that he will not be afforded due process but provides no evidence to substantiate that in the circumstances of his case, the Iranian courts would be likely to violate his rights under article 14 and that he would have no possibility to challenge such violations. The State party adds that there is no real risk that the author's right to legal representation under article 14, paragraph 3, would be violated. It bases this contention on advice from the Australian embassy in Teheran, which states:

"In relation to the operation of the Iranian Revolutionary Courts, the Mission's legal advice is that a defendant accused of drug trafficking offences does have the right of legal ... counsel. The defendant can use a court-appointed lawyer or select his/her own. In the latter case, the lawyer selected must be authorized to appear in the Revolutionary Court. The fact that a lawyer's credentials are approved by the Revolutionary Court does not compromise that lawyer's independence. A lawyer who knows and is known to the Court can generally achieve more for a client in the Iranian system. There is also provision for review of a conviction and sentence by a higher tribunal."

4.13 Concerning the claim under article 15, the State party submits that the author's allegation does not fall within the scope of application of the provision and thus should be declared inadmissible ratione materiae under article 3 of the Optional Protocol: while Mr. J. asserts that if he were sentenced under Iranian criminal law he would be subject to a penalty heavier than the one which he served in Australia, he raises no issue of retrospectivity and thus the issue of a violation of article 15 does not arise.

4.14 Finally, as to the claim under article 16, the State party recognizes the author as a person before the law and accepts its obligation to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant. It dismisses the author's claim under article 16 as devoid of substantiation and thus inadmissible under article 2 of the Optional Protocol or, subsidiarily, as without merits.

Examination of admissibility and of the merits

5.1 On 3 April 1996, the communication was transmitted to the State party, requesting it to provide information and observations in respect of the admissibility of the communication. Under rule 86 of the Committee's rules of procedure, the State party was requested to refrain from any action that might result in the forced deportation of the author to a country where he is likely to face the imposition of a capital sentence. On 5 March 1997, the Attorney-General of Australia addressed a letter to the Chairman of the Committee, requesting the Committee to withdraw the request for interim protection under rule 86, pointing out that the author had been convicted of a serious criminal offence, after having entered Australia with the express purpose of committing a crime. The State party's immigration authorities had given his applications full and careful consideration. As Mr. J. had become eligible for parole on 7 October 1996, he had been placed under immigration detention pursuant to the Migration Act 1958, pending his deportation. The Attorney-General further noted that the author would be kept in immigration detention as long as the Committee had not reached a final decision on his claims, and strongly urged the Committee to decide on Mr. J.'s claims on a priority basis.

5.2 During its 59th session in March 1997, the Committee considered the Attorney-General's request and gave it careful consideration. It decided that on the balance of the material before it, the request for interim protection should be maintained, and that the admissibility and the merits of the author's case should be considered during the 60th session. Counsel was advised to forward his comments on the State party's submission in time for the Committee's 60th session. No comments have been received from counsel.

6.1 The Committee appreciates that the State party has, although challenging the admissibility of the author's claims, also provided information and observations on the merits of the allegations. This enables the Committee to consider both the admissibility and the merits of the present case, pursuant to rules 94, paragraph 1, of the Committee's rules of procedure.

6.2 Pursuant to rule 94, paragraph 2, of the rules of procedure, the Committee shall not decide on the merits of a communication without having considered the applicability of any of the grounds of admissibility referred to in the Optional Protocol.

6.3 The author has claimed violations of articles 15 and 16 of the Covenant. The Committee notes, however, that there is no issue of alleged retroactive application of criminal laws in the instant case (article 15). Nor is there any indication that the author is not recognized by the State party as a person before the law (article 16). The Committee therefore considers these claims inadmissible under article 2 of the Optional Protocol.

6.4 The author has claimed a violation of article 14, paragraph 7, because he considers that a retrial in Iran in the event of his deportation to that country would expose him to the risk of double jeopardy. The Committee recalls that article 14, paragraph 7, of the Covenant does not guarantee ne bis in idem with respect to the national jurisdictions of two or more states - this provision only prohibits double jeopardy with regard to an offence adjudicated in a given State[7]. Accordingly, this claim is inadmissible ratione materiae under article 3 of the Optional Protocol, as incompatible with the provisions of the Covenant.

6.5 The State party contends that the author's claims relating to articles 6, 7 and 14, paragraphs 1 and 3, are either inadmissible on the ground of non-substantiation, or because the author cannot be deemed to be a "victim" of a violation of these provisions within the meaning of article 1 of the Optional Protocol. Subsidiarily, it rejects these allegations as being without foundation.

6.6 The Committee is of the opinion that the author has sufficiently substantiated, for purposes of admissibility, his claims under articles 6, 7 and 14, paragraphs 1 and 3, of the Covenant. As to whether he is a "victim" within the meaning of article 1 of the Optional Protocol of violations of the above provisions if the State party were to deport him back to his home country, it is to be recalled that the Refugee Review Tribunal, as well as the decision of the single judge of the Federal Court of Australia, considered it to be a real risk that the author might face treatment of an extremely harsh nature if he were deported to Iran, and that this risk was a matter of serious concern. In these circumstances, the Committee considers that the author has plausibly argued, for purposes of admissibility, that he is a "victim" within the meaning of the Optional Protocol and that he faces a personal and real risk of violations of the Covenant if deported to Iran.

6.7 The Committee therefore concludes that the author's communication is admissible in so far as it appears to raise issues under articles 6, 7 and 14, paragraphs 1 and 3, of the Covenant.

6.8 What is at issue in this case is whether by deporting Mr. J. to Iran, Australia exposes him to a real risk (that is, a necessary and foreseeable consequence) of a violation of his rights under the Covenant. States parties to the Covenant must ensure that they carry out all their other legal commitments, whether under domestic law or under agreements with other states, in a manner consistent with the Covenant. Relevant for the consideration of this issue is the State party's obligation, under article 2, paragraph 1, of the Covenant, to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant. The right to life is the most fundamental of these rights.

6.9 If a State party deports a person within its territory and subject to its jurisdiction in such circumstances that as a result, there is a real risk that his or her rights under the Covenant will be violated in another jurisdiction, that State party itself may be in violation of the Covenant.

6.10 With respect to possible violations by Australia of articles 6, 7 and 14 of the Covenant by its decision to deport the author to Iran, three related questions arise:

- does the requirement under article 6, paragraph 1, to protect the author's right to life and Australia's accession to the Second Optional Protocol to the Covenant prohibit the State party from exposing the author to the real risk (that is, the necessary and foreseeable consequence) of being sentenced to death and losing his life in circumstances incompatible with article 6 of the Covenant as a consequence of deportation to Iran?

- do the requirements of article 7 prohibit the State party from exposing the author to the necessary and foreseeable consequence of treatment contrary to article 7 as a result of his deportation to Iran? and;

- do the fair trial guarantees of article 14 prohibit Australia from deporting the author to Iran if deportation exposes him to the necessary and foreseeable consequence of violations of due process guarantees laid down in article 14?

6.11 The Committee notes that article 6, paragraph 1, of the Covenant must be read together with article 6, paragraph 2, which does not prohibit the imposition of the death penalty for the most serious crimes. Australia has not charged the author with a capital offence but intends to deport him to Iran, a State which retains capital punishment. If the author is exposed to a real risk of a violation of article 6, paragraph 2, in Iran, this would entail a violation by Australia of its obligations under article 6, paragraph 1.

6.12 In the instant case, the Committee observes that Mr. J.'s allegation that his deportation to Iran would expose him to the "necessary and foreseeable consequence" of a violation of article 6 has been refuted by the evidence which has been provided by the State party. Firstly and most importantly, the State party has argued that the offence of which he was convicted in Australia does not carry the death penalty under Iranian criminal law; the maximum prison sentence for trafficking the amount of cannabis the author was convicted of in Australia would be five years in Iran, i.e. less than in Australia. Secondly, the State party has informed the Committee that Iran has manifested no intention to arrest and prosecute the

author on capital charges, and that no arrest warrant against Mr. J. is outstanding in Iran. Thirdly, the State party has plausibly argued that there are no precedents in which an individual in a situation similar to the author's has faced capital charges and been sentenced to death.

6.13 While States parties must be mindful of their obligations to protect the right to life of individuals subject to their jurisdiction when exercising discretion as to whether or not to deport said individuals, the Committee does not consider that the terms of article 6 necessarily require Australia to refrain from deporting an individual to a State which retains capital punishment. The evidence before the Committee reveals that both the judicial and immigration instances seized of the case heard extensive arguments as to whether the author's deportation to Iran would expose him to a real risk of violation of article 6. In the light of these circumstances, and especially bearing in mind the considerations in paragraph 6.12 above, the Committee considers that Australia would not violate the author's rights under article 6 if the decision to deport him to Iran is implemented.

6.14 In assessing whether, in the instant case, the author is exposed to a real risk of a violation of article 7, considerations similar to those detailed in paragraph 6.12 above apply. The Committee does not take lightly the possibility that if retried and resentenced in Iran, the author might be exposed to a sentence of between 20 and 74 lashes. But the risk of such treatment must be real, i.e. be the necessary and foreseeable consequence of deportation to Iran. According to the information provided by the State party, there is no evidence of any actual intention on the part of Iran to prosecute the author. On the contrary, the State party has presented detailed information on a number of similar deportation cases in which no prosecution was initiated in Iran. Therefore, the State party's argument that it is extremely unlikely that Iranian citizens who already have served sentences for drug-related sentences abroad would be re-tried and re-sentenced is sufficient to form a basis for the Committee's assessment on the foreseeability of treatment that would violate article 7. Furthermore, treatment of the author contrary to article 7 is unlikely on the basis of precedents of other deportation cases referred to by the State party. These considerations justify the conclusion that the author's deportation to Iran would not expose him to the necessary and foreseeable consequence of treatment contrary to article 7 of the Covenant; accordingly, Australia would not be in violation of article 7 by deporting Mr. J. to Iran.

6.15 Finally, in respect of the alleged violation of article 14, paragraphs 1 and 3, the Committee has taken note of the State party's contention that its obligation in relation to future violations of human rights by another State only arises in cases involving violations of the most fundamental rights and not in relation of possible violations of due process guarantees. In the Committee's opinion, the author has failed to provide material evidence in substantiation of his claim that if deported, the Iranian judicial authorities would be likely to violate his rights under article 14, paragraphs 1 and 3, and that he would have no opportunity to challenge such violations. In this connection, the Committee notes the information provided by the State party that there is provision for legal representation before the tribunals which would be competent to examine the author's case in Iran, and that there is provision for review of conviction and sentence handed down by these courts by a higher tribunal. The Committee recalls that there is no evidence that Mr. J. would be prosecuted if

returned to Iran. It cannot therefore be said that a violation of his rights under article 14, paragraphs 1 and 3, of the Covenant would be the necessary and foreseeable consequence of his deportation to Iran.

7. 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 as found by the Committee do not reveal a violation by Australia of any of the provisions of the Covenant.

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* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Lord Colville, Ms. Pilar Gaitan de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Danilo Türk and Mr. Maxwell Yalden.

** Pursuant to rule 85 of the Committee's rules of procedure, Ms. Elizabeth Evatt did not participate in the examination of the case.

1/ Series A No. 161 (1989).

2/ FIDAN's case [1987], Recueil Dalloz - Sirey 305-310.

3/ See Views on communications Nos. 469/1991 (Ch. Ng v. Canada), adopted on 5 November 1993, paragraph 6.2; and 470/1991 (J. Kindler v. Canada), Views adopted 30 July 1993.

4/ Communication No. 539/1993 (Keith Cox v. Canada), Views adopted 31 October 1994, paragraph 16.1.

5/ Communication No. 204/1986 (A.P. v. Italy), declared inadmissible during the 31st session (2 November 1987), paragraph 7.3.

6/ i.e. the equivalent of article 14 of the International Covenant on Civil and Political Rights.

7/ See decision on case No. 204/1986 (A.P. v. Italy), declared inadmissible 2 November 1987, paragraphs 7.3 and 8.

[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.]