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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2985/2017*, **, ***

Communication submitted by:	T.T. (represented by counsel, Elena Ashchenko)
Alleged victim:	The author
State party:	Ukraine
Date of communication:	19 April 2017 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 31 May 2017 (not issued in document form)
Date of adoption of decision:	24 March 2022
Subject matter:	Extradition to the Russian Federation; non-refoulement
Procedural issue:	Substantiation of claims
Substantive issues:	Torture; inhuman or degrading treatment; non-refoulement
Article of the Covenant:	7
Article of the Optional Protocol:	3

1.1 The author of the communication is T.T., a national of the Russian Federation and an ethnic Ingush from North Ossetia-Alania. He claims that his extradition to the Russian Federation from Ukraine will violate his rights under article 7 of the Covenant. The Optional Protocol entered into force for the State party on 25 October 1991. The author is represented by counsel.

1.2 On 31 May 2017, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to grant the author's request for interim measures and asked the State party not to extradite the

* Adopted by the Committee at its 134th session (28 February–25 March 2022).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

*** An individual opinion by Committee member Hélène Tigroudja (partly dissenting) is annexed to the present decision.

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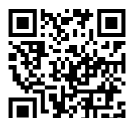

author while the communication was being considered by the Committee. Despite the Committee's request, on 12 September 2018, the author was extradited to the Russian Federation.

Factual background

2.1 On 6 October 2014, the author travelled from the Russian Federation to Georgia. Having spent a month there, he crossed the border to Turkey and remained there, working. On 6 October 2015, a criminal case (No. 316) was opened in the Russian Federation against the author under article 208 (2) of the Criminal Code – participation in an armed formation in a foreign territory, with an aim contrary to the interests of the Russian Federation. On 2 December 2015, an arrest warrant issued by the Prosecutor General's Office of the Russian Federation against the author was approved by the Leninsky District Court in Vladikavkaz. On 7 December 2015, an international search warrant was issued by the Russian Federation. On 21 March 2016, the author was charged under articles 205.3 (undergoing training with the aim of exercising terrorist activities and committing crimes under articles 205.1, 206, 208, 211, 277–279 and 360–361); 205.5 (participation in the activities of an organization recognized as terrorist in Russian legislation); 208 (2) (participation in an armed formation on the territory of a foreign State with an aim contrary to the interests of the Russian Federation) of the Criminal Code of the Russian Federation.

2.2 The author was apprehended on 17 June 2016 in the international airport of Kharkiv in Ukraine on the basis of an International Criminal Police Organization (INTERPOL) search warrant issued by the Russian Federation. The author was placed under arrest in prison No. 27 in Kharkiv. His detention for the purpose of extradition was authorized by the Kominternivsky District Court in Kharkiv on 17 June 2016 and further extended by decisions of the Zhovtnevyi District Court dated 22 July and 21 September 2016. On 15 July 2016, the Prosecutor General's Office of the Russian Federation requested extradition of the author. The documents annexed to the extradition request indicate that the author left Georgia around November 2014 and proceeded to the Syrian Arab Republic, where he joined an unlawful armed formation, "Islamic State", and participated in military attacks by this formation. On 13 October 2016, the Prosecutor General's Office of Ukraine decided to extradite the author to the Russian Federation.

2.3 On 21 October 2016, the author appealed the extradition decision of 13 October 2016 to Zhovtnevyi District Court. He claimed that, on 31 August 2016, he had submitted an application for asylum to the State Migration Service of Ukraine. On 23 September 2016, the State Migration Service informed him in a letter that his application had been forwarded to the Principal Department of the State Migration Service in Kharkiv Region for processing. According to the author, the Prosecutor General's Office was not allowed by law to authorize his extradition while his asylum claim was being considered by the State Migration Service. The author's appeal was rejected by the Zhovtnevyi District Court on 31 October 2016. The Court found that the author had been informed by a letter, received against his signature on 4 October 2016, that his application for asylum had been rejected on 28 September 2016.[1] The author has not appealed the decision of the State Migration Service, therefore, there were no obstacles for the Prosecutor General's Office to issue, on 13 October 2016, an authorization for his extradition. The author's appeal dated 4 November 2016 to the Kharkiv

[1] The decision of the State Migration Service dated 28 September 2016 stated that the author had failed to apply for asylum at the first opportunity, in Georgia and Turkey, and that he was not credible in general. It also referred to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection. Article 12 of the Directive excludes persons from being a refugee if they have committed a serious non-political crime outside the country of refuge prior to their admission as a refugee. The State Migration Service referred to the decision of the Kominternivsky District Court of 17 June 2016, according to which the author had committed crimes that, in the Criminal Code of Ukraine, corresponded to articles related to terrorism and unlawful armed formations. The author's application was thus rejected on the basis of article 1 (F) of the Convention relating to the Status of Refugees, articles 5 (2) and 6 of the Law of Ukraine on Refugees and Persons in Need of Subsidiary or Temporary Protection and the Law of Ukraine on the Fight against Terrorism.

Region Appeal Court was rejected on 10 November 2016. The Court noted, among other things, that the extradition request from the Prosecutor General's Office of the Russian Federation dated 15 July 2016 contained assurances that the extradition was not aimed at the persecution of the author on the basis of political, religious, nationality or racial grounds; that the author would receive the necessary means for his defence, including the assistance of a lawyer; that he would not be subjected to torture or inhuman or degrading treatment or punishment; and that his criminal prosecution would only be for the crimes for which his extradition had been requested.

2.4 On 19 October 2016, the author submitted a second application for asylum to the State Migration Service. In the application he claimed that he had not committed the crimes with which he had been charged and that his prosecution was motivated by ethnic and religious grounds. He is an ethnic Ingush who lived in North Ossetia and a practising Muslim.[2] He claimed that, in 2014, he had been detained on several occasions by the Federal Security Service for one or two days. He was beaten and sometimes tortured with electric shocks. These incidents have never been recorded. The author indicated that he was single and did not have children. He claimed that if he were extradited to the Russian Federation he would be tortured for crimes that he had not committed.

2.5 On 4 November 2016, the author's application for asylum of 19 October 2016 was rejected by the State Migration Service, which noted that the crimes that the author had been charged with in the extradition request corresponded to terrorism-related crimes in the Criminal Code of Ukraine; that the author had applied for asylum out of fear of facing persecution on the basis of his religion and ethnic origin; and that he had not applied for asylum in Georgia or Turkey, even though he had the possibility to do so. The State Migration Service referred to a document drafted by the Office of the United Nations High Commissioner for Refugees[3] and to Security Council resolution 2178 (2014) on threats to international peace and security caused by terrorist acts, as well as to the fact that the Russian Federation had signed the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).[4]

2.6 On 9 November 2016, the author appealed the negative decision of the State Migration Service to the Kharkiv District Administrative Court. In his appeal, the author stated that, in 2005, he had had a religious marriage and two children with his wife.[5] He claimed that, in 2014, his apartment in Nazran, the Russian Federation, had been searched and burned by Federal Security Service forces and that his wife and children had been inside. He also claimed that the Federal Security Service had planted ammunition in the house of his parents in the summer of 2014 and that he had been detained for questioning. Because he was visiting the mosque on a daily basis, the Federal Security Service wanted him to report on others, especially persons attending the mosque. The author had refused to collaborate. The author submitted a letter from his sister, dated 7 November 2016, in support of his claims. In the letter, the author mentioned that he had been regularly harassed by the Federal Security

[2] The author explains that the majority of the population in North Ossetia are either Ossetian (62.70 per cent) or Russian (23.19 per cent) and that there has been a conflict between Ossetian and Ingush ethnic groups since 1992. In 1992, his parents left North Ossetia for Ingushetia, after their house was burned. They came back to their native village in North Ossetia in 1998 where they remain.

[3] Office of the United Nations High Commissioner for Refugees, "Addressing security concerns without undermining refugee protection – UNHCR's perspective" (Geneva, 2015). The reference is made to paragraph 7 of the document in which the Office of the High Commissioner states that international refugee instruments do not provide a safe haven to terrorists and do not protect them from criminal prosecution. On the contrary, they render the identification of persons engaged in terrorist activities possible and necessary, foresee their exclusion from refugee status and do not shield them against criminal prosecution, nor do they prevent extradition or expulsion.

[4] In paragraph 5 of the resolution, the Security Council recalled that member States should, consistent with international human rights law, international refugee law and international humanitarian law, prevent and suppress the recruiting, organizing, transporting or equipping of individuals who travelled to a State other than their States of residence or nationality for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of their travel and of their activities.

[5] The author stated that he was single with no children in his application for asylum (see para. 2.4 above).

Service, in particular he had been stopped, checked and threatened with detention, and that his house had been searched. He also mentioned that, in 2012, during a search, Federal Security Service officers had found 72 cartridges in his parents' house. The author had been taken for questioning but released after his mother had written a statement that the cartridges had been planted by the Federal Security Service. According to the letter, the author left North Ossetia because of constant harassment and in order to look for work.

2.7 On 23 December 2016, the Kharkiv District Administrative Court rejected the author's appeal. The Court stated that the author had not provided, neither to the State Migration Service nor to the Court, evidence of persecution on grounds of race, religion, nationality, ethnic origin, belonging to a social group or political reasons that would support his claim for international protection. Neither did the author provide any evidence that he is a person in need of subsidiary protection, namely that he was forced to arrive in Ukraine as a result of a threat to his life, safety or freedom in his country of origin or due to a fear of torture or inhuman or degrading treatment or punishment. The Court noted that the author had claimed that he feared going back to the Russian Federation due to a risk of torture or inhuman or degrading treatment, but that he had not supported his claims with any evidence regarding the threats or any unlawful actions against him. According to the information on file, the author did not flee from the Russian Federation, but left voluntarily. On the basis of the facts before it, the Court concluded that the author's claims were farfetched and motivated by his wish to legalize his status in Ukraine, and not by his fear of persecution on discriminatory grounds in his country of origin. The Court noted that the information on file indicated that the State Migration Service had evaluated country information concerning the Russian Federation and, in combination with other elements of the case, including the results of interviews with the author and the lack of substantiation of alleged persecution in the country of origin, it had concluded that the author had left the Russian Federation voluntarily, searching for better living conditions. The Court further noted that the author's extradition was connected with terrorism-related charges and that the Office of the United Nations High Commissioner for Refugees and the Security Council (see above) had reminded States about their obligation to bring terrorists to justice.

2.8 On 4 January 2017, the author submitted an appeal to the Kharkiv District Appeal Court. Among other things, the author pointed out that the State Migration Service had not evaluated country information concerning the Russian Federation and the human rights situation therein. He provided references to international sources indicating constant persecution of practising Muslims in North Ossetia, including fabrication of criminal charges, in particular those of participating in military actions in the Syrian Arab Republic against persons living peacefully in Turkey. He also emphasized that the State Migration Service had not interviewed him personally.

2.9 The Kharkiv District Appeal Court rejected the author's appeal on 15 February 2017. The author's cassation appeal to the Higher Administrative Court, dated 27 February 2017, was rejected on 3 March 2017.

Complaint

3.1 The author claims, in his submission to the Committee, that his extradition to the Russian Federation would put him at risk of torture or inhuman or degrading treatment in violation of article 7 of the Covenant.[6] He claims that his extradition would be motivated by his ethnic origin, religious beliefs and the terrorism-related charges against him. The author refers to the concluding observations of the Committee[7] and those of the Committee against Torture[8] and to the case law of the European Court of Human Rights to support his claims of widespread torture in the Russian Federation against persons suspected of terrorist activities.[9]

6 The author was extradited on 12 September 2018 to the Russian Federation (para. 4.2).

7 CCPR/C/RUS/CO/6.

8 CAT/C/RUS/CO/5.

9 Reference is made to European Court of Human Rights, *Isayev and others v. Russia*, application No. 43368/04, Judgment, 21 June 2011; *Mudayevy v. Russia*, application No. 33105/05, Judgment, 8 April 2010; and *Khambulatova v. Russia,* application No. 33488/04, Judgment, 3 March 2011.

He claims that the authorities of the State party did not carry out a thorough evaluation of country information regarding the Russian Federation and of his asylum claims.

3.2 The author claims that his personal circumstances reinforce his fear of being subjected to torture in North Ossetia and refers to the persecution by the law enforcement agencies when he lived in North Ossetia and Vladikavkaz, their efforts to recruit him as a collaborator, previous periods of detention, the burning of his apartment while his family were inside, planting ammunition in his parents' house etc. (see paras. 2.4 and 2.6 above). He claims that the State party's authorities should have taken these facts into account when assessing his asylum claim.

3.3 The author further claims that, as an ethnic Ingush living in North Ossetia, he belongs to a national minority, which is treated with bias. His family was forced to leave North Ossetia in 1992 and could only return in 1998, after the conflict had ended. This fact gives reasons to believe that the pretrial investigation, carried out by the authorities of North Ossetia, will not be objective and independent.

Lack of cooperation by the State party

4.1 In notes verbales dated 31 May 2017, 26 September 2018 and 26 August 2019, the Committee requested the State party to submit information and observations on the admissibility and the merits of the present communication. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information with regard to the admissibility or the substance of the author's claims. It recalls that article 4 (2) of the Optional Protocol obliges States parties to examine in good faith all allegations brought against them and to make available to the Committee all information at their disposal. The Committee considers that, in the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they have been properly substantiated.[10]

4.2 The Committee notes that the State party failed to respect the Committee's request for interim measures by extraditing the author on 12 September 2018, before the Committee had concluded its consideration of the communication.

4.3 The Committee recalls that, under article 39 (2) of the Covenant, it is empowered to establish its own rules of procedure, which the States parties have agreed to recognize. The Committee further observes that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation of any of the rights set forth in the Covenant (preamble and art. 1 of the Optional Protocol). Implicit in a State's adherence to the Optional Protocol is the undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications and, after examination thereof, to forward its Views to the State party and to the individual concerned (art. 5 (1) and (4)). It is incompatible with those obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication and in the expression of its Views.[11]

4.4 The Committee reiterates that, apart from any violation of the Covenant found against a State party in a communication, a State party commits serious violations of its obligations under the Optional Protocol if it acts to prevent or frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views concerning the implementation of the obligations of the State party under the Covenant nugatory and futile.[12] Having been notified of the communication and the request by the Committee for interim measures of protection,

[10] See, for example, *Sannikov v. Belarus* (CCPR/C/122/D/2212/2012), para. 4; and *Khalmamatov v. Kyrgyzstan* (CCPR/C/128/D/2384/2014), para. 4.

[11] See, inter alia, *Piandiong v. Philippines* (CCPR/C/70/D/869/1999 and Corr.1), para. 5.1; *Maksudov v. Kyrgyzstan* (CCPR/C/93/D/1461/2006, 1462/2006, 1476/2006 and 1477/2006), paras. 10.1–10.3; and *Yuzepchuk v. Belarus* (CCPR/C/112/D/1906/2009), para. 6.2.

[12] See, inter alia, *Idieva v. Tajikistan* (CCPR/C/95/D/1276/2004), para. 7.3; and *Kovaleva and Kozyar v. Belarus* (CCPR/C/106/D/2120/2011), para. 9.4.

the State party committed a serious violation of its obligations under the Optional Protocol by extraditing the alleged victim before the Committee had concluded its consideration of the present communication.

4.5 The Committee recalls that interim measures under rule 94 of its rules of procedure, adopted in accordance with article 39 of the Covenant, are essential to the Committee's role under the Optional Protocol, in order to avoid irreparable damage to the victim of an alleged violation. Violation of that rule, especially by irreversible measures, such as, in the present case, the extradition of the author, undermines the protection of Covenant rights through the Optional Protocol.[13]

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

5.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 The Committee notes the author's claim that he has exhausted all available domestic remedies. The Committee notes that the author had made use of two parallel domestic procedures, namely contesting his extradition and applying for asylum. While there is no explanation from the author or from the State party regarding the link between these two procedures, it appears from the court documents and the author's appeals annexed to the submission that the consideration of the asylum application by the State Migration Service or an appeal to the courts concerning one of its decisions automatically suspends extradition until the final decision in the asylum case. In this light, the Committee notes that the author has exhausted all available domestic remedies, therefore, the Committee considers that it is not precluded from examining the communication by article 5 (2) (b) of the Optional Protocol.

5.4 The Committee notes the author's claims that if he were extradited to the Russian Federation, he would be at risk of torture or inhuman or degrading treatment or punishment on the ground of his religion, because he is a practising Muslim; on the ground of his Ingush ethnicity, since he lived in North Ossetia, belonged to a national minority and would therefore be treated with bias; and because of the nature of the charges brought against him, which are connected to terrorism-related crimes. The Committee notes the author's account of previous harassment by the Federal Security Service forces in 2014, his mentioning of the burning of his apartment with his wife and children inside and the planting of ammunition in his parents' house. The Committee also notes the author's references to the country information concerning torture of terrorist suspects in the Russian Federation.

5.5 The Committee notes that, in the context of the extradition proceedings, the Prosecutor General's Office and the courts analysed the formal grounds and procedural requirements of the extradition request, while the substantive claims of the author concerning non-refoulement were considered under the asylum proceedings. In this regard, the domestic court found that the author had been informed that his application for asylum had been rejected on 28 September 2016. Since the author had not appealed the decision of the State Migration Service, there were no obstacles for the Prosecutor General's Office to issue, on 13 October 2016, an authorization for his extradition (para. 2.3). The Committee notes, furthermore, that none of the author's claims concerning his previous persecution has been substantiated in any way. The only document supporting the author's claims submitted to the Committee and, seemingly, to the domestic courts is a letter from his sister, in which he only mentions that he was regularly harassed by the Federal Security Service and threatened with detention and that his house was searched. He does not mention in the letter any regular detention or the

[13] See, inter alia, *Saidova v. Tajikistan* (CCPR/C/81/D/964/2001), para. 4.4; *Tolipkhuzhaev v. Uzbekistan* (CCPR/C/96/D/1280/2004), para. 6.4; and *Kovaleva and Kozyar v. Belarus*, para. 9.5.

alleged burning of the author's apartment while his family was there. As the author himself acknowledges, the State party's authorities addressed and rebutted his allegations (para. 2.7).

5.6 In view of the above, the Committee finds that the author has failed to substantiate the reasons why he fears that his extradition to the Russian Federation would result in a risk of treatment contrary to article 7 of the Covenant.[14] The Committee thus finds the communication inadmissible under article 2 of the Optional Protocol for lack of substantiation.

6. The Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That the present decision be transmitted to the State party and to the author.

[14] *M.N. v. Denmark* (CCPR/C/133/D/2458/2014), para. 8.7.

Annex

Individual opinion of Committee member Hélène Tigroudja (partly dissenting)

1. I agree with the inadmissibility of the complaint for lack of substantiation for the reason explained by the Committee (para. 5.5). However, as I already indicated in a previous case regarding non-compliance with the Committee's interim measures,[1] I cannot share the majority's position on the way in which this question is addressed.

2. The majority referred to the lack of cooperation by Ukraine in four paragraphs (paras. 4.2–4.5) located before the "issues and proceedings" and stated (para. 4.4) that, having been notified of the communication and the request by the Committee for interim measures of protection, the State party had committed a serious violation of its obligations under the Optional Protocol by extraditing the alleged victim before the Committee had concluded its consideration of the present communication. From a legal point of view – especially in a case of serious violation – it means that Ukraine has breached an international obligation and the logical consequence under international law of State responsibility should be that this wrongful act triggers international responsibility.

3. In most cases, the violation of this international procedural obligation is coupled with violations of the Covenant. In such circumstances, the Committee adopts Views in which the violations are listed and grants some measures of reparation.[2] However, it may happen that the sole violation attributable to the State party is the non-implementation of interim measures and, as in the present case, all substantive claims are rejected. In the present case, the Committee has adopted a decision of inadmissibility[3] and herein lies my disagreement.

4. The message conveyed to States parties by this practice of the Committee is blurred and legally incorrect. Either the State has violated an international obligation – regardless of its substantive or procedural nature – or it has not. If the State is at odds with its international obligations – and the Committee constantly stresses that article 1 of the Optional Protocol constitutes an international obligation (see para. 4.3 of the present communication) – the Committee cannot formally adopt a decision of inadmissibility. Instead, it should adopt Views or another type of decision rejecting, as inadmissible, the substantive claims of the author, but upholding the violation of article 1 of the Optional Protocol.

5. The majority of our Committee should take inspiration from the practice of the Committee on Economic, Social and Cultural Rights. In its decision on communication No. 51/2018, that Committee concluded that the substantive claims in the communication were inadmissible on various grounds;[4] then, referring to general comment No. 33 (2008) of the Human Rights Committee[5] and the jurisprudence of other international bodies, including the European Court of Human Rights and the Committee against Torture, it set out in detail the State's obligation to respect interim measures.[6] States may contest and challenge the binding nature of such measures but, at the least, the position of the Committee on Economic, Social and Cultural Rights is consistent and legally rigorous. In fact, the Committee concluded by stating that, as it had found no violation of the complainant's rights, it would simply make a general recommendation to the State party in a bid to prevent future violations of article 5 of the Optional Protocol. It recommended that, to ensure the integrity of the procedure, the State party develop a protocol for honouring the Committee's requests for interim measures and that it inform all relevant authorities of the need to honour such requests.[7]

[1] See my partly dissenting opinion in *F.F.J.H. v. Argentina* (CCPR/C/132/D/3238/2018).
[2] See, for instance, *Mikhalenya v. Belarus* (CCPR/C/132/D/3105/2018), para. 9 and annex.
[3] See, for example, *B.A. et al. v. Austria* (CCPR/C/127/D/2956/2017), paras. 9.1–9.2.
[4] *S.S.R. v. Spain* (E/C.12/66/D/51/2018), paras. 6.1–6.4.
[5] In particular, para. 19.
[6] *S.S.R. v. Spain*, paras. 7.1–7.9.
[7] Ibid., para. 10.

6. In the Nijmegen Principles and Guidelines on Interim Measures for the Protection of Human Rights, some scholars have called for the improvement of judicial practices and, especially, have stressed that international adjudicators should indicate the legal consequences of non-compliance and the type of remedy required for such breaches.[8] Considering the grave and irreversible consequences of the breach of interim measures on the integrity of the individual complaint mechanism, qualified by the Committee itself as a serious violation, it is time for the Committee to clarify the international legal consequences faced by States parties under article 1 of the Optional Protocol and to adopt a clear and consistent position on this critical issue.

[8] Principle 3 (s).