



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2469/2014\*, \*\*

<i>Communication submitted by:</i>	E.U.R. (represented by counsel, Marianne Vølund)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	23 October 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 92 and 97 of the Committee's rules of procedure; transmitted to the State party on 24 October 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	1 July 2016
<i>Subject matter:</i>	Deportation to Afghanistan
<i>Substantive issues:</i>	Right to life; risk of torture and ill-treatment; right to a fair trial
<i>Procedural issue:</i>	Insufficient substantiation of claims
<i>Articles of the Covenant:</i>	7 and 19
<i>Articles of the Optional Protocol:</i>	2 and 3

\* Adopted by the Committee at its 117th session (20 June-15 July 2016).

\*\* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Duncan Muhumuza Laki, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.  
The texts of one individual and one joint (dissenting) opinions by five Committee members are appended to the present Views.



1.1 The author of the communication is E.U.R., an Afghan national, ethnic Hazara and Shia Muslim, born in 1987. He claims that he faces a risk of assault and abuse by the Taliban in violation of article 7 of the Covenant if he is deported by Denmark to Afghanistan. Following the decision by the Danish refugee appeals board of 31 January 2013, the author was given seven days to leave Denmark voluntarily, which he failed to do. At the time of submitting his communication to the Committee, his deportation had been scheduled for 27 October 2014 at 2.55 p.m.<sup>1</sup> The author is represented by counsel.

1.2 On 24 October 2014, when registering the communication, and pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to deport the author to Afghanistan while it considers the communication.

1.3 On 24 April 2015, as part of its observations on admissibility and merits, the State party requested the Committee to review its decision to apply interim measures in the case. The Committee has maintained the interim measures in the case.

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

2.1 From early in 2009 until 2010, the author worked as bodyguard at the Maywand base in Kandahar City, for members of the United States of America police and military forces.

2.2 Early in 2010, the author started working as interpreter and was hired by the American company Mission Essential Personnel. In the beginning, he worked in Kandahar airport, but was transferred shortly after to the city of Khalat, in the province of Zabol. He started working at the Laghman base, and then for the Afghan National Police in Khalat.

2.3 The author worked as an interpreter for different American delegations until May 2011. For the last three to four months of his employment, he worked for the American intelligence service. His chief was M.W.

2.4 As part of his work as interpreter for the intelligence service, the author interpreted four conversations between M.W. and his agent/source, concerning an officer, A.M.W., who was a commander of the logistics department at the headquarters of the Afghan Army, and was affiliated with the Taliban. A.M.W. had been behind a terrorist operation that had destroyed with explosives a bridge in the city of Shafr Safa.<sup>2</sup> It was also mentioned that A.M.W. had been the owner of the construction company in Afghanistan that was to repair the bridge.

2.5 Shortly after interpreting that conversation, the author was approached by A.M.W., who asked the author to inform him about any conversations concerning him, as he wanted to know what would happen to him. A.M.W. told the author that, if he failed to inform him, he would kill him.<sup>3</sup>

2.6 A few weeks later, at the end of June 2011, A.M.W. was allegedly arrested by United States special forces and handed over to the Afghan authorities.

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<sup>1</sup> The author remains in Denmark to date.

<sup>2</sup> The agent/source informed that A.M.W.'s people had placed roadside bombs under bridges, and that the bombs had exploded when the international forces crossed the bridges. Enayat, the construction company, had made an agreement with the Afghan Army to rebuild the bridge. The owner of the company was A.M.W. The Afghan Army had not been aware that A.M.W. was the owner of the construction company, but the agent had provided this information to the US intelligence service. When the bridge exploded, vehicles were destroyed and some members of US personnel were injured.

<sup>3</sup> The author declined to pass on intelligence information to A.M.W.

2.7 The author asked for vacation to visit his sister and her husband in Kandahar. Two days after he left, he received a call from a colleague informing him that A.M.W. had been released. During his family visit, while the author and his sister were away, his brother-in-law was killed. The victim was found dead with stab wounds and his head cut off. Neighbours had reportedly heard some men outside the house asking about an interpreter and for the author, using his first name. The author unsuccessfully tried to contact M.W. on several occasions. Two days after the funeral of his brother-in-law, the author, his sister and her children left for Iran.

2.8 The author arrived in Denmark on 27 September 2011 and applied for asylum on 30 September, on the grounds of fear of an Afghan colonel with connections to the Taliban from whom he had kept information. The immigration service rejected the application on 13 July 2012 owing to inconsistencies in dates, which had affected credibility. The refugee appeals board subsequently rejected the application on 31 January 2013. The author claims that he has exhausted domestic remedies.

2.9 The author refers to the 2012 report of the Danish immigration service on the risk to Afghan employees of western companies, especially interpreters, of assault and murder by rebel groups, including the Taliban. In that context, the author also refers to pages 34 and 35 of the Office of the United Nations High Commissioner for Refugees (UNHCR) Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan.<sup>4</sup>

### **The complaint**

3.1 The author invokes article 7 of the Covenant. He alleges that his brother-in-law was killed by people allegedly linked to A.M.W., who is connected to the Taliban, and fears that he himself has been persecuted by the Taliban. He fears that, if returned to Afghanistan, he would be at risk of assault or abuse from the Taliban and the local population because he worked for American forces for two years and is perceived as a traitor.

3.2 The author states that the inconsistencies in his reported dates<sup>5</sup> were due to the pressure he had felt during the interview with the immigration services and the fact that he had not been familiar with the Gregorian calendar, which had been used throughout the process, as opposed to the Afghan calendar.

3.3 Although he cannot be sure that the murder of his brother-in-law is related to the conflict with A.M.W., the author knows for sure that the individuals who attacked his brother-in-law had been searching for him. He therefore assumes that the events were related to the conflict with A.M.W., especially since they coincided with the latter's release from detention. The author believes that, if forcibly returned to Afghanistan, as a former interpreter for the American forces, he would be persecuted by the Taliban and the local population, in violation of his rights under article 7 of the Covenant.<sup>6</sup>

3.4 The author's employment as an interpreter for the coalition forces between 2009 and 2011 has been documented by letters and recommendations that were communicated to the Danish Ministry of Foreign Affairs.

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<sup>4</sup> Available from [www.refworld.org/docid/570f96564.html](http://www.refworld.org/docid/570f96564.html).

<sup>5</sup> The author stated that A.M.W. had been arrested in June, whereas it had in fact been in May, and that he had left on vacation in July 2011, instead of June.

<sup>6</sup> The author refers to page 35 of the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan, which states that "Anti-Government elements have reportedly threatened and attacked Afghan civilians who work for international military forces as drivers and interpreters or in other civilian capacities".

3.5 The author also complains about the violation of his rights under article 19 of the Covenant, on the grounds that his work as interpreter, which is a manifestation of his freedom of speech, is seen by the Taliban as treason. As a result of his deportation to Afghanistan, he would be deprived of that right.

#### **State party's observations on admissibility and merits**

4.1 On 24 April 2015, the State party submitted observations on the admissibility and merits of the communication. The State party considers that the author has failed to substantiate the risk of irreparable harm as a consequence of his forced return to Afghanistan and for the same reasons considers the communication inadmissible as manifestly ill-founded owing to a lack of substantiation.

4.2 The State party explains that its obligations under articles 6 and 7 of the Covenant are reflected in paragraph 7 (2) of the Aliens Act, under which a residence permit will be issued to an alien upon application if the alien is at risk of the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in the event of return to his or her country of origin. According to its practice, the refugee appeals board will generally consider the conditions for issuing a residence permit under section 7 (2) of the Aliens Act to be met when there are specific and individual factors substantiating that the asylum seeker would be exposed to a real risk of the death penalty or of being subjected to torture or to inhumane or degrading treatment or punishment in case of return to his or her country of origin.

4.3 With respect to the assessment of evidence, it is incumbent on an asylum seeker to substantiate that the conditions to be granted asylum are met. The assessment of evidence performed by the refugee appeals board is not governed by specific rules of evidence. It is based on an overall assessment of the asylum seeker's statements and demeanour during the board's hearing, in combination with other information in the case, including the board's background material on the applicant's country of origin. In the adjudication of the case, the board will seek to determine what findings of fact it should make, based on evidence. If the asylum seeker's statements appear coherent and consistent, the board will normally accept them as facts. In cases where the asylum seeker's statements throughout the proceedings are characterized by inconsistencies, changing statements, expansions or omissions, the board will seek to clarify the reasons. However, inconsistent statements by the asylum seeker about crucial parts of his or her grounds for seeking asylum may weaken his or her credibility. If in doubt about the applicant's credibility, the board will always assess to what extent the principle of the benefit of the doubt should be applied.

4.4 In the present case, the State party recalls that, on 13 July 2012, the Danish immigration service rejected the author's asylum application and, on 31 January 2013, the refugee appeals board upheld that decision. On 13 May 2013, the author's counsel requested the reopening of the asylum proceedings. That request was denied on 25 February 2014, on the grounds that the author had been recorded as having failed to appear in the asylum centre.

4.5 On 13 October 2014, the Danish National Police informed the refugee appeals board that the author had been detained, and the board agreed to reconsider the reopening of the asylum proceedings on the basis of the author's previous request. On 2 March 2015, the board refused to reopen the asylum procedure. The board found no basis for reopening the case, nor any basis for extending the time limit for the author's departure.

4.6 The State party recalls that, as his asylum grounds, the author had referred to his fear of being killed by a local colonel affiliated with the Taliban in case of his return to Afghanistan because he had withheld information from him. In connection with his employment with the private company Mission Essential Personnel, the applicant had

interpreted for United States forces in Afghanistan and, as a result, had obtained intelligence information. In that connection, the applicant had become aware that the colonel had been suspected of collaborating with the Taliban. In a specific incident in June 2011, the colonel in question had contacted the applicant and had threatened to kill him if he did not pass on the intelligence information. The applicant had declined to pass on the information and the colonel had been arrested by American forces four or five days later. In July 2011, the applicant had learned that the colonel had been released. The applicant's brother-in-law had been killed the same day by persons unknown to the applicant. Those persons had asked as to the whereabouts of the applicant.

4.7 The refugee appeals board accepted as a fact that the author had acted as an interpreter for international security forces, but determined that, viewed in isolation, this did not form a basis for asylum. The board rejected the author's account of his alleged conflict with A.M.W. and his statement that his brother-in-law had been killed because of the author's conflict with the A.M.W. The board further determined that the author had made inconsistent statements on significant circumstances, including his attempts to establish contact with the American intelligence officer M.W. and the date on which he had learned about the imminent arrest of A.M.W. The author has persistently stated that the A.M.W. was arrested at the end of June 2011 and that he (the author) went on vacation with his sister in Kandahar at the beginning of July 2011.

4.8 The refugee appeals board deemed the author not to be credible as, in response to a query from the Ministry of Foreign Affairs, Mission Essential Personnel had stated on 12 June 2012 that the author's last day at work had been 1 May 2011, and that he had resigned from his position for family reasons. The board also found that the killing of the author's brother-in-law had not had been sufficiently substantiated as related to the applicant's conflict with A.M.W. Against that background, the board upheld the decision of 13 July 2012 of the Danish immigration service to refuse asylum to the author.

4.9 The refugee appeals board questioned a document produced by the author emanating from the police authorities in the Kandahar province that had confirmed that the author's brother-in-law had been killed because terrorists had been looking for the author. The board first noted that, owing to its form and contents, the document appeared to have been fabricated for the occasion. The board also found it conspicuous that, after having been refused asylum by the board, the author had contacted a lawyer who had requested, on his behalf, that the police investigate a killing that had taken place in 2011. No explanation was provided as to why the alleged killing of the brother-in-law had not previously been reported to the authorities. The State party notes the board's observation that it is possible to purchase all kinds of forged documents in Afghanistan.

4.10 The State party further recalls that the refugee appeals board questioned the production by the author of a statement from a major J.S. The board wondered why a statement had not instead been produced from M.W., to whom he author had referred several times and who was allegedly his main contact person. The letter of recommendation from J.S. stated that the author had worked as an interpreter for international security forces at Qalat police headquarters in Zabul from 1 July 2010 to 31 May 2011. During the interview conducted on 13 January 2012 by the Danish immigration service, the author had stated that he had started working for the intelligence service around March 2011 and therefore no longer worked with J.S. Therefore, it seems peculiar that J.S. should be able to confirm that the author had been employed until 31 May 2011 as the author no longer worked for him at that time. For the above reasons, the board did not give any evidentiary value to the statement, which was considered fabricated for the occasion.

4.11 The refugee appeals board further noted that the author had provided inconsistent statements on the period of his employment with Mission Essential Personnel. In his asylum registration report of 30 September 2011, the author had stated that his employment

had started at the end of 2009, about one year after his return from Pakistan. On the same occasion, he had declared that he had worked as an interpreter for one year and four or five months. As regards the period of his employment, he had reported that he had worked as an interpreter from 2010 to 5 May 2011.

4.12 During his asylum interview conducted by the Danish immigration service on 13 January 2012, the author had stated that he had applied for a job with Mission Essential Personnel around the beginning of January 2010 and that he had worked there until his departure at the beginning of July 2011, without resigning from his position at any time.

4.13 During his hearing before the refugee appeals board on 23 January 2013, the author stated that his employment with Mission Essential Personnel had started in 2010, that he had acted as an interpreter at a meeting between M.W. and A.M.W. in June 2011, and that he had gone on vacation to Kandahar in June 2011 after receiving a threat from A.M.W. The vacation had been ordered by Mission Essential Personnel as interpreters were ordered to go on vacation after three months' employment. However, the letter of recommendation from J.S. indicates that the author had worked as an interpreter for international security forces from 1 May 2010 to 31 May 2011.

4.14 In the author's request for reopening of proceedings on 23 October 2014, he stated that he had worked for Mission Essential Personnel between 2010 and May 2011. However, the author did not return after his vacation in June 2011.

4.15 During his asylum interview conducted by the Danish immigration service on 13 January 2012, the author made three different statements on the date on which he had become aware of the arrest of A.M.W. Following an overall assessment, the refugee appeals board determined that the author had failed to provide a credible statement on his grounds for asylum and that he had failed to render probable that, if returned to Afghanistan, he would be at a real risk of persecution or abuse falling within section 7 of the Aliens Act.

4.16 The State party observes that the author's allegations before the Committee are largely identical to those presented in his request for reopening of proceedings submitted to the refugee appeals board on 23 October 2014.

4.17 According to the State party, the author has failed to establish a prima facie case for the purpose of his communication under article 7 of the Covenant. It has not been established that there are substantial grounds for believing that he would be in danger of being subjected to torture or to other cruel, inhuman or degrading treatment or punishment if returned to Afghanistan.

4.18 With respect to his allegations concerning article 19 of the Covenant, the State party observes that the author is seeking to apply the obligations with regard to that article in an extraterritorial manner, as his claims do not rest on any treatment that he has suffered in Denmark or in an area where Danish authorities are in effective control or owing to the conduct of Danish authorities. Accordingly, the State party submits that the Committee lacks jurisdiction over this alleged violation in respect of Denmark and that this part of the communication is thus inadmissible *ratione loci* and *ratione materiae*, and is incompatible with the provisions of the Covenant.

4.19 Should the Committee find the author's communication admissible, the Government submits that the author has not sufficiently established that it would constitute a violation of article 7 of the Covenant to return him to Afghanistan, on account of his lack of credibility with respect to several crucial elements of his asylum application.

4.20 The State party further refers to reports included as background information available to the refugee appeals board and forming the basis of its decision, including the UNHCR International Protection Needs of Asylum Seekers from Afghanistan and the 2012

report of the Danish immigration service fact-finding mission to Kabul entitled “Afghanistan – Country of Origin Information for Use in the Asylum Determination Process”.<sup>7</sup> On the basis of that documentation, it appears that the decisive factor is whether, following an assessment of the information in the specific case in conjunction with the current background information, it is found that the relevant person would be at a specific and individual risk of persecution in case of his return to Afghanistan.

4.21 The State party also refers to the judgment of 9 March 2013 of the European Court of Human Rights in *H. and B. v. the United Kingdom* (applications Nos. 70073/10 and 44539/11),<sup>8</sup> which concerned, inter alia, an Afghan national who had previously been employed as an interpreter for United States forces in Afghanistan. In that judgment, the Court rejected that the applicant would not be safe in Kabul because of his profile and the security situation there. It not convinced that the second applicant would be at risk in Kabul solely because of his previous work as an interpreter for the United States forces, and stated that it must instead examine the individual circumstances of his case, the nature of his connections and his profile.

4.22 In the present case, the State party reiterates the refugee appeals board’s findings that the author had made inconsistent statements on several crucial elements of his grounds for asylum, and that he was trying to use the Committee as an appellate body and have the Committee reassess the factual circumstances relied upon in support of his claim for asylum. The Government submits that the Committee must give considerable weight to the findings of facts made by the board, which is better placed to assess the factual circumstances in the author’s case. The State party concludes by reiterating that the author has failed to establish a prima facie case for the purpose of admissibility of his communication under articles 7 and 19 of the Covenant, and that it should be rejected as inadmissible. Should the Committee find the communication admissible, the Government further submits that it has not been established that there are substantial grounds for believing that it would constitute a violation of article 7 of the Covenant to return the author to Afghanistan.

#### **Author’s comments on the State party’s observations**

5.1 On 3 July 2015, the author submitted his comments to the State party’s observations. He notes that, since he has been in Denmark, he has applied for a United States “special immigrant visa” using the pro bono legal counsel of an American law firm in partnership with the Iraqi Refugee Assistance Project, which provides legal representation for Iraqis and Afghans who at risk as a result of their work as interpreters with the United States military. The author annexes a letter dated 23 June 2015 from the law firm, which describes the author’s application process for a special immigrant visa, and notes that his legal counsels in the United States have repeatedly attempted to contact one supervisor, M.W., but have been unsuccessful so far. This may be due to his involvement in intelligence matters, which require personnel to change their contact information frequently. The firm also managed to collect statements from two interpreters who worked at the same base as the author. The author tried several times to contact M.W., without success. He therefore rejects the refugee appeals board’s determination that no explanation has been offered as to why a statement was produced from a commanding officer but not from M.W., to whom the author had referred several times and who was allegedly his main contact person.

5.2 With respect to the State party’s assertion endorsing the refugee appeals board’s conclusion that it seems strange and not very likely that the police would confirm in writing

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<sup>7</sup> Available from [www.refworld.org/docid/505af0352.html](http://www.refworld.org/docid/505af0352.html).

<sup>8</sup> Available from [www.refworld.org/docid/5165b6764.html](http://www.refworld.org/docid/5165b6764.html).

that the author's brother-in-law had been killed by terrorists because of the author, the author reiterates his previous statement and attaches the original police report in the Dari language, as well as Danish and English translations. He further refers to page 35 of the UNHCR report entitled "Beyond proof: Credibility Assessment in European Union Asylum Systems",<sup>9</sup> which states that a finding of implausibility must be based on reasonably drawn objectively justifiable inferences, and that the examiner should not speculate on how events could have or should have unfolded or how the applicant or a third party ought to have behaved. The author notes that, in any event, whether or not his brother-in-law was killed because of the author's conflict with A.M.W. is not the key issue in the case. It is impossible for the author or the Kandahar police to establish and fully document the circumstances of the killing of the author's brother-in-law. However, it cannot be excluded that he was killed as an act of retaliation for the author's work as an interpreter. The most important element is the question of the risk faced by the author upon return.

5.3 Concerning the issue of dates, the author recalls that he worked with the Afghan police from the beginning of 2009 until the beginning of 2010. He was later employed by Mission Essential Personnel, which establishes contracts between interpreters and companies, in this case the United States and international security forces. In other words, the author was employed with Mission Essential Personnel but on contract with the United States and international security forces from the beginning of 2010 until May 2011.

5.4 The author worked in three different teams: first in Laghman camp, then after six months he joined a team at the Qalat police headquarters, under the leadership of J.S., and finally after a further two months the author was informed that he should interpret for the intelligence service, under M.W.

5.5 The State party has relied on the refugee appeals board's decision of 2 March 2015 to challenge the author's credibility with respect to dates. In particular, it has referred to a letter of recommendation from J.S., which stated that the author had worked as an interpreter for international security forces at Qalat police headquarters in Zabul from 1 July 2010 to 31 May 2011. The board also relied on the author's interview of 13 January 2012 before the Danish immigration service, during which the author claimed he had started working for the intelligence service around March 2011 and therefore then no longer worked with J.S.

5.6 The author submits that he correctly asserted before the Danish immigration service that he had started working for the intelligence service around March 2011. He did not mention that he no longer worked with J.S., and that was simply the conclusion of the refugee appeals board. In fact, J.S. was the head officer of all troops at the Qalat police headquarters in Zabul, including the intelligence service. The author worked under different supervisors, but worked at Qalat police headquarters from July 2010 until May 2011.

5.7 The undated letter of recommendation from J.S., which states that the author worked for international security forces from 1 July 2010 to 31 May 2011, was written as a recommendation letter to the interpreters who needed one when applying for a special immigrant visa to the United States. It is not meant to provide an employment record with precise start and end dates. The letter was probably a standard one, in which J.S. only changed names and regiments for each interpreter in need of a recommendation letter.

5.8 The author also includes a letter of recommendation dated 29 January 2015, drafted by J.A., which states that J.A. had been the author's immediate supervisor from 15 July 2010 to 20 May 2011, during which time the author had worked as his "trusted and personal linguist in Police headquarters" while J.A. served with the Afghan National Police

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<sup>9</sup> Available from [www.refworld.org/docid/519b1fb54.html](http://www.refworld.org/docid/519b1fb54.html).



in Zabul. The letter further states that, as a result of his service to the United States army, the author faced a constant threat while in Afghanistan and would be in danger from individuals and groups opposed to the United States presence if returned.

5.9 The also author refers to an e-mail dated 24 June 2015 from S.B., one of the pro bono lawyers providing the author with legal counsel for his special immigrant visa. Having worked for the United States military, S.B. confirms that, there is nothing unusual about such date discrepancies, and that awards and letters of appreciation are not intended to be formal records of employment, and often reflect the dates that particular units were present rather than the precise dates that the interpreter started or ended working. He also states that it is not surprising that the author would continue to work with J.S.'s unit even as he assisted others in the intelligence service.

5.10 The author explains that, by mistake, he mentioned June and July instead of May and June. The only remaining question is whether he ended his work on 1 May, 31 May or another date in May 2011. The author does not remember the exact dates, but states that he went on vacation in Kandahar at the end of May 2011. He then left Kandahar in the middle of June and was on his way back with his sister and her children at the end of June/beginning of July 2011, when he left Afghanistan.

5.11 However, the author submits that the essential matter is not the precise date when he officially terminated his contract as interpreter with the United States forces, but rather the fact that he had acted as such for almost a year and a half, during which time he had a conflict with A.M.W., a powerful colonel and owner of construction companies.<sup>10</sup>

5.12 The author adds that all employees with contracts with international forces are at high risk of assault and murder from rebel groups, including the Taliban. Interpreters are at particular risk as they are seen as "the eyes of the Americans".

#### **State party's further observations**

6.1 On 24 February 2016, the State party reiterated its previous submission. It recalled that the refugee appeals board had accepted as a fact that the author had worked as an interpreter for the American forces, including that the author had interpreted conversations with A.M.W. However, the board did not accept the author's allegation that he had experienced subsequent conflicts with A.M.W. as the board found that the author had made non-credible and inconsistent statements in this respect. The State party adds that the board thoroughly examined each of the author's claims, and particularly analysed the threats allegedly received by the author in Afghanistan, and had found them to be inconsistent and implausible on several grounds.

6.2 The State party adds that the statements from two interpreters in support of the author cannot be considered to provide first-hand information about the alleged conflict of the author with A.M.W., but merely confirm that a powerful person named A.M.W. operated in the area, which has not been dismissed by the refugee appeals board.

6.3 The State party maintains that the author has failed to establish a prima facie case for the purpose of admissibility of his communication under articles 7 and 19 of the Covenant, and that the communication is therefore manifestly ill-founded and should be considered inadmissible. Should the Committee find the communication admissible, the State party maintains that it has not been established that there are substantial grounds for believing

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<sup>10</sup> The author annexed the testimony of two of his colleagues/interpreters, who provided information on the author.

that it would constitute a violation of article 7 of the Covenant to return the author to Afghanistan.

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

7.1 On 28 April 2016, the author submitted that the State party relied solely on a correspondence dated 12 June 2012, received by the Danish Ministry of Foreign Affairs from Mission Essential Personnel, which stated that the author had worked from April 2010 to 1 May 2011, and that he had resigned from his position for family reasons.

7.2 In August 2015, the author's counsel contacted Mission Essential Personnel, which confirmed that the author had never formally given the company his formal resignation, but had only orally given the "point of contact" of his resignation, which was then notified to Mission Essential Personnel.<sup>11</sup>

7.3 The author adds that he had left his job and Afghanistan without informing anyone. During his interview with the Danish immigration service on 11 July 2012, he stated that an Afghan colleague of his, the head of interpreting, might have stated that the author had resigned for family reasons, so as not to jeopardize his possible resumption of duties, and that this reason had later been retained as the official reason for his resignation. The fact that the author resigned and left the country without telling anyone is further confirmed in an e-mail sent to the author by M.W., dated 15 January 2013, which states: "since you had your vacation in June, you disappeared".<sup>12</sup>

7.4 The author agrees that there are discrepancies in dates: in the letter from J.S., it is stated that the author acted as an interpreter for international security forces at Qalat police headquarters in Zabul from 1 July 2010 to 31 May 2011; in the consultation response of 12 June from Mission Essential Personnel, received by the Danish Ministry of Foreign Affairs, the author is reported to have worked from April 2010 to 1 May 2011; finally, in the letter produced by S.B. — the author's legal counsel in the United States — received from J.A., it appears that J.A. was the author's supervisor from 15 July 2010 to 20 May 2011. Consequently, according to the author, such discrepancies support the fact that there is no precise date for his resignation, as there was no official resignation.

7.5 However, the author notes that the main reason for the rejection of his claims is precisely the discrepancies in the dates for his resignation, although the refugee appeals board accepted for a fact that the author acted as interpreter for the United States forces in Afghanistan. The author reiterates that, by upholding the denial of his asylum claim, the State party has put at great risk his right to life and his right not to be exposed to acts of torture or other degrading treatment if he were returned to Afghanistan.

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

##### *Consideration of admissibility*

8.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

8.2 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. The Committee notes that it is undisputed that the

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<sup>11</sup> The author annexes the relevant e-mail exchange his counsel had with Mission Essential Personnel in this respect between 13 and 19 August 2015.

<sup>12</sup> The author annexes this exchange.

author has exhausted all available domestic remedies, as required by article 5 (2) (b) of the Optional Protocol.

8.3 The Committee takes note of the author's claim that, as an interpreter, which implies a manifestation of his right to freedom of expression, his rights under article 19 would be breached if he was removed to Afghanistan. In that connection, the Committee notes that the State party has argued that the author's claim under article 19 is inadmissible *ratione loci* and *ratione materiae*. The Committee recalls that article 2 of the Covenant imposes an obligation upon States Parties not to deport a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, in the country to which removal is to be effected.<sup>13</sup> Accordingly, to the extent that the author's allegations of a violation of article 19 rely on consequences that he would allegedly suffer if returned to Afghanistan, and that article 19 does not have extraterritorial application, the Committee considers that this part of the author's complaint is incompatible *ratione materiae* with the provisions of the Covenant and declares it inadmissible under article 3 of the Optional Protocol.

8.4 The Committee notes the State party's argument that the author's claims with respect to article 7 of the Covenant should be held inadmissible owing to insufficient substantiation, as the author "has failed to establish a prima facie case for the purpose of admissibility of his communication". At the same time, however, the Committee notes the author's detailed claims regarding the existing risks for him if deported to Afghanistan due to his past work as an interpreter in favour of the United States forces in Afghanistan for close to two years, including with United States intelligence. The Committee further notes the author's allegations that, because of his work with United States intelligence, he had a conflict with a powerful local officer and entrepreneur affiliated with the Taliban, who may be involved in the murder of his brother-in-law. The author has claimed that those elements provide substantial grounds for believing that he would be in danger of being subjected to torture or to cruel, inhuman or degrading treatment or punishment if returned to Afghanistan. The Committee is therefore of the opinion that, for the purposes of admissibility, the author has sufficiently substantiated his allegations under article 7 of the Covenant.

8.5 In the light of the above, the Committee considers that the communication is admissible, insofar as it raises issues under article 7 of the Covenant, and proceeds with its examination on the merits.

#### *Consideration of the merits*

9.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

9.2 The issue before the Committee is whether the removal of the author to Afghanistan would amount to a violation by the State party of its obligations under article 7 of the Covenant.

9.3 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk

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<sup>13</sup> See General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant.<sup>14</sup> The Committee has also indicated that the risk must be personal<sup>15</sup> and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.<sup>16</sup> Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>17</sup>

9.4 The Committee takes note of the author's allegation that, as a result of his work as interpreter for the United States forces in Afghanistan between 2009 and 2011, including the intelligence services, and because of a related conflict with a powerful individual affiliated with the Taliban, he faces a real and personal risk to be subjected to a violation of his rights under article 7 of the Covenant, if forcibly returned to Afghanistan.

9.5 The Committee notes the State party's general observation that its obligations under articles 6 and 7 of the Covenant are reflected in section 7 (2) of the Aliens Act, under which a residence permit will be issued to an alien upon application if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of his return to his country of origin. The Committee further notes the State party's observation that the onus is on the asylum seeker to substantiate his claim; that the refugee appeals board will accept apparently coherent and consistent statements as facts; and that inconsistent statements may weaken the asylum seeker's credibility.

9.6 With respect to the particular circumstances of the case, the Committee observes that the State party has rejected the author's allegations, mainly on the grounds that the author made several inconsistent statements. In its decision of 31 January 2013, upheld on 2 March 2015, the refugee appeals board has challenged, in particular, the author's statements with respect to his attempts to establish contacts with the United States intelligence officer M.W.; the date on which the author became aware of the imminent arrest of A.M.W.; and the period of employment of the author with the company Mission Essential Personnel. The board also rejected the author's claim that his brother-in-law was killed by individuals who had been searching for the author.

9.7 The Committee recalls its jurisprudence that important weight should be given to the assessment conducted by the States parties' authorities, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice,<sup>18</sup> and that it is generally for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists.<sup>19</sup>

9.8 The Committee finds that, in the circumstances, and notwithstanding the inconsistencies highlighted by the State party, insufficient attention was given to the author's allegations about the real risk he might face if deported to his country of origin.

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<sup>14</sup> See general comment No. 31 (2004), para. 12.

<sup>15</sup> See, for example, communications No. 2007/2010, *J.J. N. v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010; and No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6.

<sup>16</sup> See, for example, *J.J. N. v. Denmark* (note 17 above), para. 9.2; No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

<sup>17</sup> *Ibid.*

<sup>18</sup> See, inter alia, *ibid.* and communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, para. 6.2.

<sup>19</sup> See communications No. 1763/2008, *Pillai et al. v. Canada*, Views adopted on 25 March 2011, para. 11.4 and No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3. See also communications No. 1819/2008, *A.A. v. Canada*, inadmissibility decision adopted on 31 October 2010, para. 7.8, and No. 2049/2011, *Z. v. Australia*, Views adopted on 18 July 2014, para. 9.3.

The State party refers to the jurisprudence of the European Court of Human Rights, in support of its argument that, notwithstanding the author's previous work as interpreter for the United States forces, the author should demonstrate that, owing to the individual circumstances of his case, he faces a risk upon return. However, the Committee observes that no such analysis was undertaken in the refugee appeals board, which has based its decision solely on the assessment of the author's credibility.

9.9 The Committee notes the author's claim that he mixed dates as a result of pressure felt during the interview with the immigration services and because he was not familiar with the Gregorian calendar. The Committee further observes that the author made numerous and convincing attempts to try and clarify discrepancies in dates (whether he terminated his employment on 1 May, 20 May or 31 May 2011), which cannot in and of themselves be considered to vitiate the whole credibility of his allegations.

9.10 The Committee took note of the author's claim that, owing to his past work, he belongs to a risk group under the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan, which was not contested by the State party. The author has also claimed that his brother-in-law was killed by individuals who had been searching for him, a claim that was dismissed by the refugee appeals board as insufficiently substantiated. The Committee however notes that neither the Danish immigration service nor the board initiated any investigation as to the veracity and validity of the evidence produced in support of his allegations,<sup>20</sup> aside from rejecting a police report produced by the author as a result of his reporting of the crime to the Afghan police authorities.

9.11 In the circumstances of this case, and reiterating that the refugee appeals board based its decision to reject the author's asylum claim merely on inconsistencies that are not central to the general claim made by the author as a former interpreter for the United States forces in Afghanistan, the Committee concludes that the material before it suggests that insufficient weight was given to the author's allegations and that, notwithstanding the deference given to the immigration authorities to appreciate the evidence before them, the State party has not adequately addressed the author's personal circumstances, which should have been devoted further analysis.

9.12 Accordingly, the Committee concludes that the author's removal to Afghanistan would constitute a breach by the State party of its obligations under article 7 of the Covenant.

10. The Committee acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the author's removal to Afghanistan by the State party would violate his rights under article 7 of the Covenant.

11. In accordance with article 2 (1) of the Covenant, which establishes that States Parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an obligation to proceed to a review of the decision to forcibly remove the author to Afghanistan, taking into account the State party's obligations under the Covenant and the Committee's present Views. The State party is also requested to refrain from expelling the author while his request for asylum is being reconsidered.

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<sup>20</sup> See communication No. 2370/2014, *A.H. v. Denmark*, Views adopted on 16 July 2015, para. 8.7. See also communication No. 2393/2014, *K. v. Denmark*, Views adopted on 16 July 2015.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy where it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views, to have them translated into the official language of the State party, and to ensure that they are widely disseminated.

## Annex I

### **Joint opinion of Committee members Yuval Shany, Yuji Iwasawa, Sir Nigel Rodley and Konstantin Vardzelashvili (dissenting)**

1. We regret that we are unable to join the majority on the Committee in finding that, in deciding to deport the author, Denmark would, if it implemented the decision, violate its obligations under article 7 of the Covenant.

2. In paragraph 9.7. of the Views, the Committee recalls that “important weight should be given to the assessment conducted by the States parties’ authorities, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice, and that it is generally for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists”. Despite this, the majority of the Committee engaged in what appears to us to be an independent analysis of the credibility of the author, which involved an evaluation of the discrepancies in his statements and their significance (“the author made numerous and convincing attempts to try and clarify discrepancies in dates (whether he terminated his employment on 1 May, 20 May or 31 May 2011), which cannot in and of themselves be considered to vitiate the whole credibility of his allegations” (para. 9.9); “the refugee appeals board based its decision to reject the author’s asylum claim merely on inconsistencies that are not central to the general claim made by the author as a former interpreter for the United States forces in Afghanistan” (para. 9.11)).

3. We find the willingness of the Committee to evaluate *de novo* the credibility of the author’s statements and to form a different conclusion about them than the refugee appeals board to run contrary to the “clearly arbitrary or denial of justice” standard articulated in paragraph 9.7 of the Views, and to past Views of the Committee that emphasized that it is not “a fourth instance competent to re-evaluate findings of fact”.<sup>a</sup>

4. In past cases in which the decision of State organs to deport an individual was found by the Committee to run contrary to the Covenant, the Committee sought to base its position on inadequacies in the domestic decision-making process, such as failure to properly take into account available evidence or the specific rights of the author under the Covenant,<sup>b</sup> serious procedural flaws in the conduct of the domestic review proceedings<sup>c</sup> or the inability of the State party to provide a reasonable justification for its decision.<sup>d</sup> In the present case, however, the Committee’s Views do not point to a failure to consider an important piece of information, any procedural flaw or lack of motivation of the decision to deport. Instead, the majority on the Committee appears to have formed an independent opinion on the credibility of the author, without having the benefit of interviewing him directly and without adequately explaining why the multiple inconsistencies in his statements concerning key parts in his story (the dates in which the events giving rise to the alleged risk took place) and the serious doubts about the authenticity of the documents he

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<sup>a</sup> See, for example, communication No. 1138/2002, *Arenz et al v. Germany*, Views adopted on 24 March 2004, para. 8.6.

<sup>b</sup> See, for example, communication No. 1544/2007, *Hamida v. Canada*, Views adopted on 18 March 2010, paras. 8.4 to 8.6.

<sup>c</sup> See, for example, communication No. 1908/2009, *X. v. Republic of Korea*, Views adopted on 25 March 2014, para. 11.5.

<sup>d</sup> See, for example, communication No. 1222/2003, *Byahuranga v. Denmark*, Views adopted on 1 November 2004, para. 11.3 and 11.4.

submitted to the refugee appeals board, should not have led a reasonable decision-maker to regard his statement as lacking in credibility. We are equally unpersuaded by the explanations for the inconsistencies provided by the author (and uncritically adopted by the majority), that he was not familiar with the Gregorian calendar despite having worked for more than two years with international forces in Afghanistan as a bodyguard and an interpreter. We are therefore of the view that the Committee should not have second-guessed the findings of the board that his statements lacked in credibility.

5. While the majority on the Committee is correct in observing that findings on credibility do not fully absolve the State party from engaging in an assessment of the risk to the author if deported (para. 9.8), we do not find a basis in the case file to hold that the State party failed to evaluate the risk to the author. On the contrary, it relied on a recent European Court of Human Rights judgment<sup>e</sup> to support the conclusion that the author's past employment as an interpreter for international forces would not in itself place him under real risk if returned to Kabul. Furthermore, we note that the author himself admitted that he "cannot be sure that the murder of his brother-in-law is related to the conflict with A.M.W." (para. 3.3) and has not shown that the Afghan authorities would not be able to protect a low-profile person such as him from violence by the Taliban. It thus does not appear to us to be manifestly arbitrary or a denial of justice for the refugee appeals board to find the author not subject to a real risk of irreparable harm if returned to Afghanistan.<sup>f</sup>

6. Finally, with respect to the position taken by the majority on the Committee, according to which the State party should have engaged in an independent investigation of the events in Afghanistan alleged by the author (para. 9.10), we are of a view that such a duty to investigate can only be triggered by statements that establish a prima facie case for a real risk of irreparable harm. However, owing to his vague allegations about the risk he currently faces in Afghanistan, his lack of certainty about the circumstances leading to his brother-in-law's death and his lack of credibility, the author failed to meet this standard.

7. We therefore respectfully dissent from the position taken by the majority on the Committee in this case. Needless to say, our dissent cannot be interpreted as an endorsement of the morality of the conduct of officials in countries providing international security force contingents, who have failed to make suitable arrangements for those locally recruited personnel who collaborated with them.

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<sup>e</sup> See *H. and B. v. the United Kingdom* (applications Nos. 70073/10 and 44539/11), judgment of the European Court of Human Rights of 9 March 2013.

<sup>f</sup> See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.



## Annex II

### Individual opinion of Committee member Anja Seibert-Fohr (dissenting)

1. I am unable to agree with the majority on the Committee that Denmark would violate its obligation under article 7 if it deported the author to Afghanistan for the reasons below.

2. According to the Committee's standing jurisprudence, States parties are under an obligation "not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant".<sup>a</sup> The Committee reaffirms this principle in paragraph 9.3 of the Views, stressing in addition that the risk must be personal and that the threshold for providing substantial grounds is high.

3. It is thus for the author of a communication to adduce evidence capable of proving that there are substantial grounds for believing that he would be exposed to a real risk of being subjected to treatment contrary to article 6 or 7. Once such evidence is adduced, it is for the State party to dispel any doubts about it.<sup>b</sup> The Committee in paragraph 9.7 reaffirms that it is generally not for the Committee but for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether a real risk exists. Therefore, in the past the Committee has found decisions of local immigration authorities to be in violation of the Covenant if the author was able to point to substantial irregularities in the decision-making procedures, such as where no substantive justification was given for a decision, where inadequate consideration was given to the author's Covenant rights or relevant evidence was not examined.<sup>c</sup>

4. In the present case, I am not able to recognize such shortcomings. The refugee appeals board considered the situation in Afghanistan and determined in reference to a judgment of the European Court of Human Rights that the employment as an interpreter for international security forces in itself does not form a basis for asylum. The author's claim under article 7 hence stood or fell by his assertion that he would be at risk of assault because he had withheld information from a local officer of the Afghan Army affiliated with the Taliban. In his submission, the author claims that he had interpreted secret conversations concerning the officer and that shortly thereafter the officer had threatened to kill him if he did not inform him about such conversations. The author also claims that subsequently his brother-in-law was killed because of the author's conflict with the officer.

5. The Danish authorities examined the author's submissions. With respect to the murder of the author's brother-in-law, the refugee appeals board questioned that it had related to the author and considered that the document from local police authorities confirming the link appeared to be fabricated for the occasion. Furthermore, the board found the author's account of his alleged conflict with the officer to be incredible. During

<sup>a</sup> See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

<sup>b</sup> See *mutatis mutandis*, *Sufi and Elmi v. the United Kingdom* (applications nos. 8319/07 and 11449/07), judgment of the European Court of Human Rights of 28 June 2011, para. 214.

<sup>c</sup> See, for example, communication No. 1222/2003, *Byahuranga v. Denmark*, Views adopted on 1 November 2004, paras. 11.3 and 11.4; No. 1544/2007, *Hamida v. Canada*, Views adopted on 18 March 2010, para. 8.5; No. 1908/2009, *X. v Republic of Korea*, Views adopted on 25 March 2014, para. 11.5.

his hearing, the author had stated that the events had taken place in June 2011. Later, when the board obtained information indicating that he had resigned from his position in May, he explained that he had mentioned June and July instead of May and June as a result of pressure felt during the interview with the immigration services and because he was not familiar with the Gregorian calendar.<sup>d</sup>

6. Following an overall assessment, the refugee appeals board held that the author's account was not credible. It based its assessment *inter alia* on inconsistent statements on the period of the author's employment as interpreter and inconsistencies in the reported dates on which the events giving rise to the alleged risk had taken place, and concluded that he had failed to substantiate a real risk of irreparable harm.

7. Against this background, I am not able to agree with the majority's criticism that the State party failed to evaluate the individual circumstances of the author's case. On the contrary, the State party examined the evidence submitted by the author, analysed the alleged threats received by the author in Afghanistan and explained why it found them to be inconsistent and implausible. The inconsistently reported dates had related to the events that allegedly gave rise to the author's claimed risk and thus cannot be described as peripheral to his claim.

8. I also disagree with the criticism voiced by the majority of the Committee regarding the investigation of the murder, namely, the failure to investigate the veracity and validity of the evidence.<sup>e</sup> The author concedes that it is not possible to establish and fully document the circumstance of the killing<sup>f</sup> and maintains that at least it could not be excluded that the murder had been an act of retaliation against the author. This vague submission, however, is insufficient for the purpose of adducing evidence capable of proving substantial grounds for a real risk<sup>g</sup> and thus does not demand further investigative measures by the State party.

9. Denmark therefore cannot be reproached either for a failure to examine relevant evidence or for inadequate consideration of information provided by the author. Nevertheless, the majority of the Committee holds that insufficient weight was given to the author's allegations, and that the State party has not adequately addressed the author's personal circumstances. I fail to see which other individual circumstances the majority of the Committee may envisage that the refugee appeals board has failed to analyse and therefore respectfully dissent from the Committee's Views.

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<sup>d</sup> See footnote 5 and para. 5.10.

<sup>e</sup> Para. 9.10.

<sup>f</sup> See para. 5.2.

<sup>g</sup> See para. 3 of this opinion.