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Opinion No. 54/2015 concerning Julian Assange (Sweden and the United Kingdom of Great Britain and Northern Ireland)*

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.

2. In accordance with its methods of work (A/HRC/30/69), on 16 September 2014 the Working Group transmitted a communication to the Governments of Sweden and the United Kingdom of Great Britain and Northern Ireland concerning Julian Assange. The Government of Sweden replied to the communication on 3 November 2014. The Government of the United Kingdom replied to the communication on 13 November 2014. Sweden and the United Kingdom are parties to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

* In accordance with rule 5 of the methods of work of the Working Group, Leigh Toomey did not participate in the discussion of the present case.
The individual dissenting opinion of Vladimir Tochilovsky is annexed to the present opinion.

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Julian Assange, born on 3 July 1971, is an Australian national ordinarily resident in Sydney, Australia. He worked as a publisher and journalist prior to his arrest.

5. The source submits that Mr. Assange has been detained since 7 December 2010, including 10 days in isolation in Wandsworth prison, London, 550 days under house arrest, and thereafter in the Embassy of Ecuador in London. The source submits that the Governments of both the United Kingdom and Sweden are the entities responsible for holding the detainee in custody.

6. The source states that Mr. Assange applied for political asylum on 19 June 2012 and was granted asylum by Ecuador on 16 August 2012. It is alleged that Sweden refused to recognize the political asylum granted to Mr. Assange. According to the source, Sweden insisted that Mr. Assange give up his right to political asylum and be extradited to Sweden, without any guarantee of non-refoulement to the United States of America, where he faced, in the source's view, a well-founded risk of political persecution and cruel, inhuman or degrading treatment.

7. The source notes that Sweden issued a European arrest warrant for Mr. Assange in order to secure his presence in Sweden for questioning in relation to an investigation. No decision has yet been made as to whether there will be a prosecution and the investigation remains at the preliminary phase. Mr. Assange has not been charged with any crime in Sweden. Consequently, the source argues, Mr. Assange did not have the formal rights of a defendant, such as access to potentially exculpatory material.

8. On 16 July 2014, Stockholm District Court upheld the arrest warrant. It refused to acknowledge that Mr. Assange had been deprived of liberty during his house arrest and during the time he had spent at the Embassy of Ecuador. The court considered that he had been detained only for the 10 days he was held in Wandsworth prison (7-16 December 2010). The court refused to acknowledge Mr. Assange's right to asylum.

9. The source submits that, during the entire period of his detention, Mr. Assange was deprived of a number of fundamental freedoms, and that several elements contributed to the arbitrary nature of the detention, ultimately resulting therefore in arbitrary detention. The key elements are:

(a) Mr. Assange's lack of access to the full benefits of the asylum granted to him by Ecuador in August 2012;

(b) The continuing and disproportionate denial of such access over a period of time during which its cumulative impact has become harsh and disproportionate;

(c) The basis of the reasoning used by Sweden to justify issuing the European arrest warrant, and the way in which the arrest warrant has been upheld and pursued to the present time.

10. The source emphasizes that Mr. Assange's detention was not by choice. Mr. Assange had an inalienable right to security and to be free from the risk of persecution, inhuman treatment and physical harm. Ecuador granted Mr. Assange political asylum in August 2012, recognizing that his fear of facing such risks if he were extradited to the United States was well-founded. The only protection he had from those risks at the time was to stay within the confines of the Embassy of Ecuador; the only way for Mr. Assange to enjoy his right to asylum was to be in detention.

11. The source highlights that the Working Group has agreed in previous cases that a deprivation of liberty exists where someone is forced to choose between either confinement or forfeiting a fundamental right, such as asylum, thereby facing a well-founded risk of persecution. In the source's view, the European Court of Human Rights and the Office of the United Nations High Commissioner for Refugees similarly adhere to this principle.

12. The source submits that Mr. Assange was deprived of his liberty against his will and that his liberty has been severely restricted, against his volition. Individuals cannot be compelled to renounce an inalienable right, nor can they be required to expose themselves to the risk of significant harm. Mr. Assange's exit from the Embassy of Ecuador would require him to renounce his right to asylum and expose himself to the very persecution and risk of physical and mental ill-treatment that granting him asylum was intended to address. His continued presence in the Embassy cannot, therefore, be characterized as volitional.

13. The source argues that Mr. Assange's detention is arbitrary and falls under categories I, II, III and IV of the categories applicable to the consideration of the cases submitted to the Working Group. In particular, the context of his deprivation of liberty is the result of the failure by Sweden, which initiated legal proceedings against him, to obtain his extradition, owing to the contradictory wishes expressed by the alleged victims, and having not established a prima facie case, refusing, unreasonably and disproportionately, to establish a means of questioning him through the normal processes of mutual assistance. It should be noted that Mr. Assange offered to cooperate with the Swedish authorities by facilitating a number of alternative processes short of being extradited to Sweden. It has been stated on the record that, if extradited, Mr. Assange would be imprisoned on his arrival in Sweden and, as a foreigner with no ties to Sweden, would be held in custody until his trial. Moreover, Mr. Assange is under constant surveillance and the conditions in which he is living, out of necessity, do not adhere to the minimum rules for detainees.

14. The source submits that Mr. Assange has been deprived of his fundamental freedoms against his will and that the deprivation of his liberty is arbitrary and illegal. The arbitrary nature of Mr. Assange's confinement in the Embassy of Ecuador in London is based on the following:

(a) Sweden is obliged by applicable law and Convention obligations to recognize the asylum granted to Mr. Assange, and no exceptions apply (categories II and IV). Mr. Assange faces a serious risk of refoulement to the United States. The right to asylum and the related protection against refoulement is recognized under customary international law;

(b) The actions taken by the Swedish prosecutor, including the insistence on issuing a European arrest warrant rather than pursuing questions with Mr. Assange in the United Kingdom as provided for by mutual assistance protocols (categories I

and III), are of a disproportionate nature. For over two years, the prosecutor has refused to consider alternative mechanisms that would allow Mr. Assange to be questioned in a manner compatible with his right to asylum. The disproportionality of the prosecutor's decision is aggravated by her failure to take into consideration Mr. Assange's fundamental right to asylum, especially in the context of the refusal of the Swedish authorities to provide assurances regarding non-refoulement;

(c) The prosecutor has alternative mechanisms to secure information from Mr. Assange. If Mr. Assange leaves the confines of the Embassy, he forfeits his most effective and potentially only protection against refoulement to the United States. Any hypothetical investigative inconvenience regarding the questioning of Mr. Assange by video link or in the Embassy pale into insignificance when compared to the grave risk that refoulement poses to Mr. Assange's physical and mental integrity. Since the preliminary investigation has not progressed since 2010, it has not been completed, thus violating Mr. Assange's right to a speedy resolution of the allegations against him, in accordance with article 14 (1) of the International Covenant on Civil and Political Rights;

(d) By virtue of the fact that Mr. Assange has been denied the opportunity to provide a statement, which is a fundamental aspect of the *audi alteram partem* principle, and denied access to exculpatory evidence, he has also been denied the opportunity to defend himself against the allegations. The prosecutor is fully aware that the practical consequence of this decision is that Mr. Assange is compelled to remain within the confines of the Embassy of Ecuador. This failure to consider alternative remedies has therefore consigned Mr. Assange to lengthy pretrial detention, which greatly exceeds any acceptable length for a person who has not been charged. The duration of such detention is ipso facto incompatible with the presumption of innocence;

(e) Since both the Swedish prosecutor and Stockholm District Court have refused to consider Mr. Assange's confinement under either house arrest or in the Embassy as a form of detention, he has been denied the right to contest the continued necessity and proportionality of the arrest warrant in the light of the length of his detention, that is, his confinement in the Embassy. According to the source, Mr. Assange is effectively serving a sentence for a crime with which he has not even been charged. The Swedish authorities have nonetheless refused to acknowledge that this confinement should be taken into consideration for the purposes of calculating the sentence, should Mr. Assange be convicted of a crime. His continued confinement therefore exposes him to a violation of *nemo debet bis vexari pro una et eadem causa*; if convicted in Sweden, he would be forced to serve a further sentence in relation to conduct for which he has already been detained, in violation of article 14 (7) of the International Covenant on Civil and Political Rights;

(f) The detention is of an indefinite nature and there is no effective form of judicial review or remedy concerning the prolonged confinement and the extremely intrusive surveillance to which Mr. Assange has been subjected (categories I, III and IV). Sweden has refused to recognize Mr. Assange's confinement as a form of detention, leaving him no means to seek judicial review of the length and necessity of his confinement in the Embassy. Mr. Assange has been continuously subjected to highly invasive surveillance for the past four years. The legal basis for the particular surveillance measures has never been disclosed to him, and it is unlikely it will be, as the United States national security investigation against him is still under way. He has thus been deprived of the ability to contest their necessity or proportionality. The prospect of indefinite confinement is, in itself, a violation of the requirement set out by the Human Rights Committee that a maximum period of detention be established

by law and that, upon expiry of that period, the detainee must be automatically released;

(g) The minimum conditions accepted for prolonged detention of this nature, such as medical treatment and access to outside areas, have not been met (category III). The Embassy of Ecuador in London is not a house or detention centre equipped for prolonged pretrial detention; it lacks the appropriate and necessary medical equipment or facilities. If Mr. Assange's health were to deteriorate or if he were to have anything more than a superficial illness, his life would be seriously at risk.

Response from the Governments

15. In the communications addressed to the Governments of Sweden and the United Kingdom on 16 September 2014, the Working Group transmitted the allegations made by the source. The Working Group stated that it would appreciate it if the Governments could, in their reply, provide it with detailed information about the current situation of Mr. Assange and clarify the legal provisions justifying his continued detention. The Government of Sweden replied on 3 November 2014 and the Government of the United Kingdom on 13 November 2014.

16. According to the Government of Sweden, on 18 November 2010 a Swedish prosecutor requested that Mr. Assange be detained in his absence on probable cause as he was suspected of committing rape, two counts of sexual molestation and unlawful coercion. On the same day, Stockholm District Court decided to detain Mr. Assange in his absence. The decision was upheld by Svea Court of Appeal on 24 November 2010. In order to execute the detention order, the Swedish prosecutor issued an international arrest warrant and a European arrest warrant.[1]

17. According to the Government of Sweden, in February 2011 the City of Westminster Magistrates' Court ruled that Mr. Assange should be surrendered to Sweden in accordance with the European arrest warrant. That decision was upheld by the High Court in a ruling of 2 November 2011 and by the Supreme Court on 30 May 2012. As a result of the European arrest warrant, Mr. Assange was apprehended in the United Kingdom and was detained there between 7 and 16 December 2010. Thereafter, he was subject to several restrictions, such as house arrest. On 16 August 2012, Mr. Assange was granted asylum by Ecuador and, since June 2012, he has resided at its Embassy in London.

18. On 24 June 2014, Mr. Assange requested a reconsideration of the detention order before Stockholm District Court. On 16 July 2014, the Court ruled that the decision on detention in absentia should be upheld. Mr. Assange appealed the decision before Svea Court of Appeal and a decision on the matter was still pending.

19. According to the source, Sweden insisted that Mr. Assange give up his right to political asylum and be extradited to Sweden without any guarantee of non-refoulement to the United States. Also according to the source, Mr. Assange faces a well-founded risk of political persecution and cruel, inhuman or degrading treatment. In that respect, the Government submitted the observations set out below.

20. The Government of Sweden emphasized that it was important for all countries to act in accordance with international human rights standards, including their treaty obligations.

21. The Government clarified the difference between the procedures pertaining to a European arrest warrant and the question concerning a guarantee of non-refoulement or extradition to a third State. The surrendering of persons within the European Union is based

[1] See Council Framework Decision, 2002/584/JHA of the Council of the European Union.

on European Union law and the common area for justice and the principle of mutual recognition of judicial decisions and judgments. The European arrest warrant applies throughout the European Union and provides improved and simplified judicial procedures designed to surrender people for the purpose of conducting, inter alia, a criminal prosecution. In the current case, a European arrest warrant has been issued by a Swedish prosecutor owing to the fact that Mr. Assange is suspected of having committed serious crimes in Sweden and has been detained in his absence for those crimes.

22. The procedures pertaining to extradition are based on multilateral and bilateral treaties, and on the Swedish Extradition for Criminal Offences Act (1957:668). According to the Act, extradition may not be granted unless the criminal act is punishable in Sweden and corresponds to an offence for which imprisonment for one year or more is prescribed by Swedish law. If there is a risk of persecution, or, under certain conditions, if the offence is considered to be a military or a political offence, extradition may not be granted. Furthermore, the death penalty may not be imposed on an extradited person for the offence. A decision on extradition is taken by the Government, after the Office of the Prosecutor-General has conducted an investigation and delivered a statement of opinion and, in case the person sought does not consent to extradition, a subsequent decision by the Supreme Court. Should the Supreme Court find that there are any obstacles to extradition, the Government is bound by that decision.

23. The Government of Sweden emphasized the fact that, to date, no request for Mr. Assange's extradition has been directed to Sweden. Any discussion about extraditing Mr. Assange to a third State is therefore strictly hypothetical. Furthermore, any potential decision for extradition must be preceded by a thorough examination of all the circumstances of the particular case. Such an examination cannot be made before a State has requested extradition of a specific person and specified the reasons invoked in support of the request. In addition, if a person has been surrendered to Sweden pursuant to a European arrest warrant, Sweden must obtain the consent of the surrendering State, in this case the United Kingdom, before being able to extradite the person sought to a third country. In the light of the above, the Government refutes the submission made by the source that Mr. Assange faces a risk of refoulement to the United States.

24. In any case, the Government holds that the Swedish extradition and European arrest warrant procedures contain sufficient safeguards against any potential extradition in violation of international human rights agreements.

25. In relation to the submission by the source that Sweden is obliged by applicable law and Convention obligations to recognize the diplomatic asylum granted to Mr. Assange by the authorities of Ecuador, the Government submitted the observations set out below.

26. Regrettably, the source does not specify which law and Convention obligations Sweden is obliged to recognize. However, in the Government's opinion, general international law does not recognize a right of diplomatic asylum as implied by the source. The International Court of Justice has confirmed this fundamental position. The Government also emphasizes that the Convention on Diplomatic Asylum of the Organization of American States does not constitute general international law. On the contrary, it is a regional instrument and no similar instruments or practices exist elsewhere. Accordingly, the Government does not find itself bound by the aforementioned regulations.

27. It should furthermore be noted that, according to relevant international instruments, including the Convention on Diplomatic Asylum, the right to seek and enjoy asylum does not apply if an applicant invokes as ground for asylum that he or she is wanted for ordinary, non-political, crime (see, for example, art. 14 of the Universal Declaration of Human Rights). In this respect, the Government notes that Mr. Assange is suspected of rape, sexual

molestation and unlawful coercion, all non-political crimes, and can therefore not rely on the above-mentioned legal frameworks in this respect.

28. In the light of the above, the Government refutes the source's allegation that Sweden is obliged by applicable law and Convention obligations to recognize the asylum granted.

29. The source also alleges that Mr. Assange's detention is arbitrary, and falls under categories I, II, III and IV of the categories applicable to the consideration of the cases submitted to the Working Group. In this regard, the Government of Sweden notes that the source has not explained how Mr. Assange's situation corresponds to the criteria adopted by the Working Group. For example, the Government notes that, except for the source's reference to article 14 of the International Covenant on Civil and Political Rights, it is unclear under which other relevant international legal framework, if any, Mr. Assange is invoking his rights.

30. In any case, the Government contests the assertion that Mr. Assange is being deprived of his liberty in violation of the criteria adopted by the Working Group and that, accordingly, the Standard Minimum Rules for the Treatment of Prisoners would apply to his situation. In this regard, the Government notes that Mr. Assange, has chosen voluntarily to reside at the Embassy of Ecuador. The Swedish authorities have no control over his decision to stay at the Embassy. Mr. Assange can therefore not be regarded as being deprived of his liberty owing to any decision or action taken by the Swedish authorities. In this respect, the Government specifically notes that there is no causal link between Mr. Assange's current situation at the Embassy and the European arrest warrant issued by the Swedish authorities (see Opinions No. 9/2008 (Yemen) and No. 30/2012 (Islamic Republic of Iran)). The Government holds that Mr. Assange is free to leave the Embassy at any point.

31. In relation to the submission that Mr. Assange does not have the formal rights of a defendant during the Swedish preliminary investigation, such as access to potentially exculpatory material, the Government submitted the observations set out below.

32. In Sweden, a Swedish authority, usually a prosecutor or a police officer, is responsible for conducting a preliminary investigation. The purpose of the preliminary investigation is to produce all the evidence in favour of, or against, a crime and a particular suspect. During a preliminary investigation, a suspect is entitled to examine all the material upon which the allegation is based and to request the police to carry out further investigations, such as questioning witnesses. The prosecutor is not allowed to issue an indictment unless the suspect has declared that no further actions or measures are required in the preliminary investigation.

33. Since 1995, the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and the Protocols thereto ratified by Sweden, form part of Swedish law. Article 6 of the Convention is therefore an integral part of Swedish legislation. Hence, Swedish legislation on criminal procedure, including preliminary investigations, meets the requirements of the Convention. In the light of the above, the submission that Mr. Assange does not have the formal rights of a defendant lacks merit.

34. As regards the submission that the deprivation of Mr. Assange's liberty has arisen from the refusal by Sweden to consider alternative mechanisms and to question him through the procedures of mutual legal assistance, the Government makes the observations set out below.

35. According to the Swedish Instrument of Government (1974:152), the Government of Sweden may not interfere in an ongoing case handled by a Swedish public authority. The Swedish authorities, including the Office of the Prosecutor and the courts, are thus

independent and separate from the Government. In the present case, the Swedish prosecutor in charge of the preliminary investigation has determined that Mr. Assange's presence is necessary for the investigation of the crimes of which he is suspected. The prosecutor has the best knowledge of the ongoing criminal investigation and is therefore best placed to determine the specific actions needed during the preliminary investigation. In relation to suspicions of serious crime, such as the ones at hand, the interests of the victims are an important aspect of the considerations made by the prosecutor.

36. As regards Mr. Assange's potential detention in Sweden, the Government wishes to clarify that, as soon as Mr. Assange is in Sweden, the prosecutor must notify the district court. A new hearing will then be held before the court, which Mr. Assange will attend in person. Thus, it is always for the district court to decide whether Mr. Assange should be detained or released.

37. The source submits that Stockholm District Court, in its decision on detention of 16 July 2014, refused to acknowledge Mr. Assange's right to asylum. In this respect, the Government clarifies the points set out below.

38. In its decision of 16 July 2014 (case No. B 12885-10), Stockholm District Court ruled exclusively on the question of whether Mr. Assange should continue to be detained in his absence. Essentially, the Court stated that, as a result of the European arrest warrant, Mr. Assange was detained from 7 to 16 December 2010 and has since been subjected to various restrictions that have, without being equated with a deprivation of liberty, of course been very tough for Mr. Assange. The fact that Mr. Assange chooses to remain in the Embassy of Ecuador in the United Kingdom is, in the Court's opinion, not to be considered as a deprivation of liberty and should therefore not be regarded as a consequence of the decision to detain him in his absence. The Court further stated that it did not seem to be possible to surrender Mr. Assange at present, as he is residing at an embassy, but that this is not sufficient reason to rescind the order for his detention. However, the Court makes no reference to Mr. Assange's potential right to asylum, as suggested by the source.

39. In summary, with reference to what has been stated above and in response to the invitation of the Working Group, the Government holds that Mr. Assange does not face a risk of refoulement to the United States contrary to international human rights obligations; that Sweden is not obliged by applicable law and Convention obligations to recognize the diplomatic asylum granted to Mr. Assange; that Mr. Assange is currently not deprived of his liberty in violation of the criteria adopted by the Working Group; and that the Swedish authorities are complying with international law and other treaty obligations in their handling of the criminal investigation relating to Mr. Assange.

40. According to the Government of the United Kingdom, Mr. Assange entered the Embassy of Ecuador in London of his own free will on 19 June 2012. He has been there for over two years and is free to leave at any point.

41. The Government of Ecuador granted Mr. Assange diplomatic asylum under the 1954 Convention on Diplomatic Asylum, not political asylum. The United Kingdom is not a party to the Convention on Diplomatic Asylum and does not recognize diplomatic asylum. Therefore the United Kingdom is under no legal obligations arising from the decision of Ecuador.

42. The Government of the United Kingdom considers that the use of the Embassy premises to enable Mr. Assange to avoid arrest is incompatible with the Vienna Convention on Diplomatic Relations. Mr. Assange is wanted for questioning in Sweden in connection with allegations of serious sexual offences. He is subject to a European arrest warrant in relation to those allegations. The United Kingdom has a legal obligation to extradite him to Sweden.

43. The Government of the United Kingdom takes violence against women extremely seriously and cooperates with European and other partners in ensuring that justice is done.

Comments from the source

44. On 14 November 2014, the source submitted its comments to the response of the Government of Sweden.

45. According to the source, the Governments of Sweden and the United Kingdom have continued Mr. Assange's unjust, unreasonable, unnecessary and disproportionate confinement. Over time, the basis for Mr. Assange's confinement has become so disproportionate as to have become arbitrary. Since 18 November 2010, when a court ordered a domestic arrest warrant, which a Swedish prosecutor transformed into an international arrest warrant (a European arrest warrant and an International Criminal Police Organization Red Notice) in December 2010, without judicial oversight, Mr. Assange has still not been charged.

46. Since his arrest in London on 7 December 2010 at the request of Sweden, Mr. Assange has suffered various forms of deprivation of liberty, including confinement to the Embassy of Ecuador from June 2012. Police continue to surround the Embassy, obstruct his asylum and attempt to surveil his visitors and activities, both physically and electronically.

47. On 29 October 2014, in response to an invitation by the United Kingdom, and prior to the response from Sweden, the Swedish prosecutor again refused to move the case forward by questioning Mr. Assange. Mr. Assange's chances of an independent, rigorous and fair process had already been significantly undermined because, notwithstanding his right to benefit from the presumption of innocence, Mr. Assange had been deprived of his liberty for more than the applicable maximum sentence that would apply to the allegations made in Sweden.

48. The source considers that the response of the Government of Sweden clearly set out its position that it would do nothing to stop Mr. Assange's indefinite detention despite the passage of time and the consequent impact on Mr. Assange.

49. The source emphasizes that, in its response, the Government of Sweden conceded that Mr. Assange's situation, caused by Sweden, was "very tough", yet it failed to address a single legal authority cited by Mr. Assange to demonstrate that he was deprived of liberty and that his deprivation was arbitrary. In particular, the legal authorities cited in Mr. Assange's submission showed that an arbitrary deprivation of liberty arises where a State forces an individual to "choose" between confinement and risking persecution, confinement and the ability to apply for asylum, indefinite confinement and deportation and several other circumstances in which an individual feels compelled to "choose" to suffer indefinite confinement. The Government of Sweden made no response to those assertions.

50. The source underlines that, in its response, the Government of Sweden refused to consider the grounds for Mr. Assange's asylum under the Convention relating to the Status of Refugees, customary international law or any other mechanism that derives from the *jus cogens* norm of non-refoulement. In its reply, the Government of Sweden was silent on the framework of the Convention relating to the Status of Refugees and failed to recognize that it had obligations in relation to the factual circumstances that gave rise to Mr. Assange's asylum. The failure by Sweden to recognize humanitarian grounds for asylum contradicted State practice, including that of Sweden.

51. The source states that the Government of Sweden set out its political position in relation to Mr. Assange's asylum when it noted that "the Government refutes the source's allegation that Sweden is obliged … to recognize the asylum granted". The reply did not

devote a single word to the position set out in the source's submission concerning the duty of Sweden to afford mutual recognition to asylum decisions issued by other States within the framework of the Convention relating to the Status of Refugees. The source asserts that the obligations of Sweden arise, inter alia, under that Convention, to which Sweden is a party, and under article 18 of the Charter of Fundamental Rights of the European Union. An examination of the grounds for the decision of Ecuador, including the *jus cogens* norm of non-refoulement, is also absent from the reply of Sweden.

52. According to the source, as affirmed by the Office of the United Nations High Commissioner for Refugees, States do not grant refugee status to persons; their decisions are declaratory in the sense that they simply recognize that there are well-founded grounds to consider that the person is a refugee. In that regard, the point is not merely whether Sweden is obliged to recognize asylum decisions taken by Ecuador, but whether it can ignore the fact that there has been a detailed evidential determination that Mr. Assange faces a risk of persecution and cruel, inhuman or degrading treatment.

53. The Office of the United Nations High Commissioner for Refugees has confirmed that the principle of non-refoulement applies not only to recognized refugees, but also to those who have not had their status formally declared. Accordingly, the position adopted by Sweden not to recognize the "diplomatic portion" of the asylum decision of Ecuador does not exempt it from either (a) recognizing the asylum assessment by Ecuador of Mr. Assange as a refugee under the Convention relating to the Status of Refugees or (b) its independent obligation to ensure that its domestic decisions do not ignore the evidential presumption that Mr. Assange requires protection from the risk of refoulement to the United States.

54. With regard to the narrow exclusion clause invoked by Sweden in its response, the source claims that the Government misunderstood both the clause and the grounds for Mr. Assange's asylum. Of particular note is the statement of the Government of Sweden in its response, that "the right to seek and enjoy asylum does not apply if an applicant as grounds of asylum invokes that he or she is wanted for ordinary, non-political, crime (see e.g. article 14 of the Universal Declaration of Human Rights)". The exclusion clause, as applied in the response of Sweden, misconstrues the grounds for Mr. Assange's asylum.

55. The grounds for Mr. Assange's asylum have grown stronger over time. On 19 May 2015, the United States indicated in its court submissions that the investigation against Mr. Assange was an ongoing Department of Justice and Federal Bureau of Investigation criminal investigation pending future prosecution, and that the Government of the United States had been very clear that the main, multi-subject, criminal investigation of the Department of Justice and the Federal Bureau of Investigation remained open and pending.

56. The source emphasizes that the United States continued to build its case against Mr. Assange while he was trapped in the Embassy and could at any point file an extradition request of its own. Formally, had Sweden not issued a European arrest warrant for Mr. Assange, he would not have currently faced arrest upon departure from the Embassy of Ecuador, nor would he have been subjected to the current intrusive regime of surveillance and controls. Thus, his deprivation of liberty was governed by the maintenance by Sweden of its extradition warrant and therefore falls under the authority of Sweden.

57. In that regard, the source affirms that the European arrest warrant issued by Sweden is the current formal basis for Mr. Assange's detention, although the police in the United Kingdom have been instructed to arrest Mr. Assange even if the Swedish European arrest warrant becomes void. In effect, Mr. Assange continues to face arrest and detention for breaching his house arrest conditions ("bail conditions") as a result of successfully exercising his right to seek asylum. However, the conditions of his house arrest arise directly from the issuance by Sweden of the European arrest warrant.

58. The source also asserts that the response of the Government of Sweden failed to acknowledge its own practice of affording diplomatic asylum. In particular, in its response the Government of Sweden stated that no practices exist in general international law to support the institution of diplomatic asylum. That position is inconsistent with the fact that Sweden has itself recognized that States have, under general international law, a right and a duty in certain cases to provide diplomatic asylum on humanitarian grounds.

59. The source claims that Sweden cannot rescind its own practice simply because it was responding to Mr. Assange's complaint; the principle of estoppel means in international law that States are bound by their representation and by their conduct.

60. According to the source, Sweden has long recognized humanitarian diplomatic asylum as being a part of general international law. Particularly famous is the practice of Swedish diplomatic agents, most prominently Raoul Wallenberg in Budapest, who, during several months in 1944, gave diplomatic asylum in the Embassy of Sweden and in other buildings to thousands of Jewish Hungarians and other persons as part of a then secret agreement between the United States and Sweden. In Santiago in 1973, the Swedish Ambassador to Chile, Harald Edelstam, gave numerous Chileans and other nationals sought by the authorities of Augusto Pinochet not only diplomatic asylum in the Embassy, but also safe conduct to Sweden. Sweden also granted temporary diplomatic asylum to a United States national in Tehran during the so-called Iran hostage crisis, as did Canada and the United Kingdom.

61. The source states that Sweden not only misrepresented the grounds for Mr. Assange's asylum, it also failed to address the fact that Mr. Assange applied for and obtained asylum in relation to the actions against him by the United States and the risk of political persecution and cruel, inhuman or degrading treatment.

62. With regard to the legality of the European arrest warrant, the source stresses that, since the final decision by the Supreme Court of the United Kingdom in Mr. Assange's case, the domestic law of the United Kingdom on the determinative issues has been drastically changed, including as a result of perceived abuses resulting from the European arrest warrant issued by Sweden, so that, if requested, Mr. Assange's extradition would not have been permitted by the United Kingdom.[2] Nevertheless, the Government of the United Kingdom has stated in relation to Mr. Assange that these changes are "not retrospective" and so may not benefit him. A position is maintained in which his confinement within the Embassy of Ecuador is likely to continue indefinitely. Neither Sweden nor the United Kingdom have considered it their duty to proffer any other remedy than to allow the demand for extradition to continue unchanged.

[2] In the light of Mr. Assange's case, extradition legislation in the United Kingdom has been changed. In summary, the United Kingdom has now concluded that:
(i) by virtue of a binding decision of the Supreme Court of the United Kingdom in 2013, the United Kingdom will no longer, where a request is made under a European arrest warrant, permit the extradition of individuals where the warrant is not initiated by a judicial authority. It has determined that the requirement of a "judicial authority" cannot be interpreted as being fulfilled by a prosecutor as is the case in relation to Mr. Assange;
(ii) by virtue of legislation in force since July 2014, the United Kingdom will no longer permit extradition on the basis of a bare accusation (as opposed to a formal completed decision to prosecute and charge) as is the case in relation to Mr. Assange;
(iii) by virtue of the same legislation now in force, the United Kingdom will no longer permit extradition under a European arrest warrant without consideration by a court of its proportionality (Mr. Assange's case was decided on the basis that such consideration was at that time not permitted).

63. The source argues that, in its response, the Government of Sweden asserted that Mr. Assange's confinement in the Embassy was voluntary, and that the "Swedish authorities have no control over his decision to stay at the Embassy", that he is "free to leave the Ecuadorian Embassy at any point" and that there is "no causal link" between the European arrest warrant issued by Sweden and Mr. Assange's confinement. However, even the Swedish Prosecution Authority as recently as July 2014 described Mr. Assange, in relation to its warrant against him, as remaining "in custody" and "still detained".[3]

64. With regard to the right to independent, rigorous and fair process, the source states that besides the fact that Mr. Assange had not yet been formally charged, contrary to the general statement in the response of Sweden claiming that in Sweden "during a preliminary investigation, a suspect is entitled to examine all the investigation material upon which the allegation is based", neither the Swedish court nor Mr. Assange has been granted access to the hundreds of potentially exculpatory text messages, thereby violating Mr. Assange's right to effective judicial protection.

65. On 19 November 2014, the source submitted its comments to the response of the Government of the United Kingdom. The source considers that the reply of the Government of Sweden cannot be read in isolation, since the actions, or inaction, of the two Governments were in a number of respects interdependent. Sweden, as represented by the Crown Prosecution Service of the United Kingdom, was the party formally acting against Mr. Assange in the courts of the United Kingdom.

66. According to the source, in the light of the concession by Sweden that Mr. Assange's situation is "very tough", the Government of the United Kingdom seemed to forget that those seeking asylum and those who obtain it, like Mr. Assange, are hardly making a choice based on free will, but one based on escaping from persecution. Leaving the Embassy would force him to renounce his asylum and expose himself to a risk of persecution and cruel, inhuman or degrading treatment.

67. The source asserts that the response of the Government of the United Kingdom revealed that its position was to do nothing to stop Mr. Assange's indefinite detention despite the passage of time and its consequent impact on Mr. Assange and his family. In adopting that position, the United Kingdom made the same critical error as Sweden — it refused to honour its obligations to respect Mr. Assange's asylum under either the Convention relating to the Status of Refugees or customary international law.

68. In its response, the United Kingdom did not devote a single word to its duty to afford mutual recognition to asylum decisions issued by other States within the framework of the Convention relating to the Status of Refugees. Moreover, it claimed that Mr. Assange was not granted political asylum, but instead asylum under the Convention on Diplomatic Asylum, and that because the United Kingdom is not a party to that Convention, it has no obligation to recognize it. Sweden, the United Kingdom and Ecuador are parties to the Convention relating to the Status of Refugees, which places on States an obligation to respect non-refoulement with no reservations.

69. The United Kingdom failed to acknowledge existing custom and its own practice of recognizing diplomatic asylum. States have, under general international law, a right and a duty in certain cases to provide diplomatic asylum on humanitarian grounds. This is both the general practice of States and a general practice accepted by them as law (*opinio juris*), as set out in article 38 (1) (b) of the Statute of the International Court of Justice.

[3] See www.aklagare.se/In-English/Media/News-in-English1/Report-concerning-the-detention-of-JulianAssange/; www.aklagare.se/In-English/Media/News-in-English1/Julian-Assange-still-detained/; and www.aklagare.se/In-English/Media/News-in-English1/Julian-Assange-to-remain-in-custody/.

Furthermore, numerous countries, including the United Kingdom, have recognized diplomatic asylum in their practice. Famously, the United Kingdom was prepared to grant diplomatic asylum to a large number of persons in its Embassy in Tehran under the Shah.[4] Lord McNair summarized the practice of the United Kingdom as follows: "on humanitarian grounds [the United Kingdom] has frequently authorised its diplomatic and other officers to grant temporary asylum in cases of emergency".

70. The source also asserts that, in its response, the United Kingdom suggested that Mr. Assange's extradition was deemed to be fair and proportionate by the Supreme Court of the United Kingdom. However, that decision predated the current ability of courts of the United Kingdom to consider proportionality in extradition cases. It was a complaint by the Supreme Court on exactly that point in relation to Mr. Assange that led to corrective legislation that came into force in 2014.

71. The corrective legislation of the United Kingdom addressed the court's inability to conduct a proportionality assessment of the Swedish prosecutor's international arrest warrant (corrected by sect. 157 of the Anti-Social Behaviour, Crime and Policing Act 2014, which entered into force in July 2014). The corrective legislation also barred extradition where no decision to bring a person to trial had been made (sect. 156). The prosecutor in Sweden does not dispute that she had not yet made a decision to bring the case to trial, let alone charge Mr. Assange.

72. The source asserts that the legal basis for Mr. Assange's extradition has been further eroded, since the response of the United Kingdom rested on a Supreme Court decision from which even the Supreme Court has distanced itself. In the case of *Bucnys v. Ministry of Justice, Lithuania*, the Supreme Court revisited its split decision in *Assange v. The Swedish Prosecution Authority* and explained that the single argument that had become the decisive point in the Assange case had been reached incorrectly.

73. Nevertheless, the corrective legislation in the domestic law of the United Kingdom excluded all cases that had already been decided by the courts of the United Kingdom. Thus, Mr. Assange was left without a remedy, further contributing to his legally uncertain and precarious situation. There was no willingness on the part of the United Kingdom to review the case given the subsequent circumstances (the granting of asylum) and, with it, the principle of the retroactive application of the law that was favourable to the accused, in accordance with the jurisprudence of the European Court of Human Rights. The corrective legislation was passed to prevent arbitrary detention — to prevent people languishing in prison awaiting trial — but now the United Kingdom is not remedying the very case that led to it. The passage of the new legislation is an admission of previous unfairness and the very person who suffered under it is not benefitting from it.

74. The source also claims that, in its response, the Government of the United Kingdom failed to recognize that Mr. Assange's chances of receiving an independent, rigorous and fair process had already been gravely and irreparably undermined. At a minimum, the United Kingdom should have recognized that Mr. Assange has been denied a speedy investigation and the right to defend himself, and that he has been kept under different forms of deprivation of liberty, which amount to the arbitrary detention to which he is currently subjected.

[4] P. Sykes, *The Right Honourable Sir Mortimer Durand: a biography* (Cassel and Company, 1926), p. 233; I. Roberts, *Satow's Diplomatic Practice*, 6th ed. (Oxford, Oxford University Press, 2009) para. 8.26.

75. Additionally, Mr. Assange has been, from the outset of the Swedish investigation, denied an independent, rigorous and fair process. The source alleges that the United Kingdom completely failed to respond to the argument that Mr. Assange faced a lack of fair process and prejudice owing to the fact that a confidential preliminary investigation against Mr. Assange was unlawfully disclosed to a tabloid newspaper (*Expressen*) by the Swedish Prosecution Authority within hours of its instigation, which led to a perception that there was a formal accusation against Mr. Assange.

76. The source claims that the United Kingdom did not address any of Mr. Assange's substantive rights or the wealth of authorities addressed in its complaint. The United Kingdom failed to recognize his right to asylum or to offer him safe passage. Mr. Assange faces ongoing indefinite detention and his health and family life are seriously compromised, which is a violation of numerous conventions to which the United Kingdom is a party. The response of the Government of the United Kingdom proposes no relief and only serves to reinforce the indefinite and arbitrary nature of Mr. Assange's confinement.

Discussion

77. The question that was posed to the Working Group is whether the current situation of Mr. Assange corresponds to any of the five categories of arbitrary detention applied by the Working Group in the consideration of the cases brought to its attention.

78. At the outset, the Working Group notes with concern that Mr. Assange has been subjected to different forms of deprivation of liberty from 7 December 2010 to date as a result of both the actions and the inactions of Sweden and the United Kingdom.

79. Initially, Mr. Assange was held in isolation in Wandsworth prison in London for 10 days, from 7 December to 16 December 2010, which was not challenged by either of the two respondent States. In this regard, the Working Group expresses its concern that he was detained in isolation at the very beginning of an episode that has lasted over five years. The arbitrariness is inherent in this form of deprivation of liberty as the individual is left outside the cloak of any legal protection, including access to legal assistance (see para. 60 of the Working Group's deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary law). Such a practice of law in general corresponds to the violations of rules both proscribing arbitrary detention and ensuring the right to a fair trial, as guaranteed by articles 9 and 10 of the Universal Declaration of Human Rights and articles 7, 9 (1), (3) and (4), 10 and 14 of the International Covenant on Civil and Political Rights.

80. That initial deprivation of liberty then continued in the form of house arrest for some 550 days. This again was not contested by either of the two States. During this prolonged period of house arrest, Mr. Assange was subjected to various forms of harsh restrictions, including monitoring using an electric tag, an obligation to report to the police every day and a bar on being outside of his place of residence at night. In this regard, the Working Group has no choice but to query what has hindered judicial management of any kind from occurring in a reasonable manner for such an extended period of time.

81. It is during that period that Mr. Assange sought refuge at the Embassy of Ecuador in London. Despite the fact that Ecuador granted him asylum in August 2012, his newly acquired status has not been recognized by either Sweden or the United Kingdom. Mr. Assange has been subjected to extensive surveillance by the British police during his stay at the Embassy.

82. In view of the foregoing, the Working Group considers that, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, Mr. Assange has not been guaranteed the international norms of due process and the guarantees to a fair trial during those three

different periods of time: the detention in isolation in Wandsworth prison, the 550 days under house arrest, and the continuation of the deprivation of liberty in the Embassy of Ecuador in London.

83. The Working Group is also of the view that Mr. Assange's stay at the Embassy of Ecuador in London to date should be considered as a prolongation of the already continued deprivation of liberty, in breach of the principles of reasonableness, necessity and proportionality.

84. The Working Group, in its deliberation No. 9, confirmed its position on the definition of arbitrary detention. What matters in the expression "arbitrary detention" is essentially the word "arbitrary", that is, the elimination, in all its forms, of arbitrariness, whatever the phase of deprivation of liberty concerned (para. 56). Placing individuals in temporary custody in stations, ports and airports or any other facility where they remain under constant surveillance may not amount only to restrictions to personal freedom of movement, but may also constitute a de facto deprivation of liberty (para. 59). The notion of "arbitrary" sensu stricto includes both the requirement that a particular form of deprivation of liberty is taken in accordance with the applicable law and procedure and that it is proportional to the aim sought, reasonable and necessary (para. 61).

85. The Human Rights Committee, in its general comment No. 35 on article 9, also stated that an arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of "arbitrariness" is not to be equated with "against law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity, and proportionality (para. 12).[5]

86. The Working Group is concerned that the only basis of the deprivation of liberty of Mr. Assange appears to be the European arrest warrant issued by the Swedish prosecution based on a criminal allegation. Until the date of the adoption of the present opinion, Mr. Assange has not been formally indicted in Sweden. The European arrest warrant was issued for the purpose of conducting a preliminary investigation in order to determine whether it would lead to an indictment or not.

87. In its reply, the Government of Sweden indicated that, according to Swedish law, a suspect is entitled to examine all the investigation material upon which the allegation is based. The Working Group notes in this regard that Mr. Assange has not been granted access to any such material, which is in violation of article 14 of the International Covenant on Civil and Political Rights.

88. It is noteworthy that the Working Group, while examining the essential safeguards for the prevention of torture, has stressed that prompt and regular access should be given to independent medical personnel and lawyers and, under appropriate supervision when the legitimate purpose of the detention so requires, to family members (see deliberation No. 9, para. 58). The right to personal security provided for in article 9 (1) of the International Covenant on Civil and Political Rights is relevant to the treatment of both detained and non-detained persons. The appropriateness of the conditions prevailing in detention to the purpose of detention is sometimes a factor in determining whether detention is arbitrary within the meaning of article 9 of the Covenant. Certain conditions of detention, such as access to counsel and family, may result in procedural violations of paragraphs 3 and 4 of article 9 (see deliberation No. 9, para. 59).

[5] In this regard, see also part I and part II, section C, of the Standard Minimum Rules for the Treatment of Prisoners.

89. With regard to the application of the principle of proportionality, it is also worth mentioning that Lord Reed of the Supreme Court of the United Kingdom, in *Bank Mellat v. Her Majesty's Treasury*, paragraph 74, established that it is necessary to determine (a) whether the objective of the measure is sufficiently important to justify the limitation of a protected right; (b) whether the measure is rationally connected to the objective; (c) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective; and (d) whether, balancing the severity of the measure's effects on the rights of the persons to whom it apples against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.[6]

90. The Working Group is also of the view that there has been a substantial failure to exercise due diligence on the part of the States concerned with regard to the performance of the criminal administration, given the following factual elements: (a) in the case of Mr. Assange, after more than five years, he is still left, even before the stage of the preliminary investigation, with no predictability as to whether and when a formal process of any judicial dealing might commence; (b) despite the fact that it is left to the initial choice of the Swedish prosecution as to what mode of investigation would best suit the purpose of criminal justice, the exercise and implementation of the investigation method should be conducted in compliance with the rule of proportionality, including undertaking to explore alternative ways of administering justice; (c) unlike other suspects in general whose whereabouts are either unknown or unidentifiable and whose spirit of cooperation is non-existent, Mr. Assange, while staying under constant and highly intrusive surveillance, has continued to express his willingness to participate in the criminal investigation; (d) as a consequence, his situation has now become both excessive and unnecessary — from a temporal perspective, it is worse than if he had appeared in Sweden for questioning and possible legal proceedings when first summoned to do so; (e) irrespective of whether the granting of asylum by Ecuador to Mr. Assange should be acknowledged by the concerned States and whether the concerned States could have endorsed the decision and wish of Ecuador, as they have previously done on humanitarian grounds, the granting of asylum itself and the fear of persecution on the part of Mr. Assange based on the possibility of extradition should have been given fuller consideration in the determination and the exercise of criminal administration, instead of being subjected to a sweeping judgment and defined as either merely hypothetical or irrelevant; (f) it defeats the purpose and efficiency of justice and the interest of the concerned victims to leave the matter of investigation in a state of indefinite procrastination.

91. The Working Group is convinced that Mr. Assange's current situation, in which he is staying within the confines of the Embassy of Ecuador in London, has become a state of an arbitrary deprivation of liberty. The factual elements and the totality of the circumstances that have led to this conclusion include the following elements: (a) Mr. Assange has been denied the opportunity to provide a statement, which is a fundamental aspect of the *audi alteram partem* principle, the access to exculpatory evidence, and thus the opportunity to defend himself against the allegations; (b) the duration of his detention is ipso facto incompatible with the presumption of innocence — Mr. Assange has been denied the right to contest the continued necessity and proportionality of the arrest warrant in the light of the length of his detention, that is, his confinement in the Ecuadorian Embassy; (c) the indefinite nature of the detention and the absence of an effective form of judicial review or remedy concerning the prolonged confinement and the highly intrusive surveillance to which Mr. Assange has been

[6] For an application of the proportionality principle at the European Court of Human Rights, see *James and Others v. the United Kingdom*, Application No. 8793/79.

subjected; (d) the Embassy of Ecuador in London is far less than a house or detention centre equipped for prolonged pretrial detention and lacks appropriate and necessary medical equipment or facilities — it is valid to assume, after five years of deprivation of liberty, that Mr. Assange's health could have deteriorated to such a level that anything more than a superficial illness would put his health at a serious risk, and he was denied access to a medical institution for a proper diagnosis, including a magnetic resonance imaging test; and (e) with regard to the legality of the European arrest warrant, since the final decision by the Supreme Court of the United Kingdom in Mr. Assange's case, the domestic law of the United Kingdom on the determinative issues has been drastically changed, including as a result of perceived abuses raised by the European arrest warrant issued by Sweden, so that if requested, Mr. Assange's extradition would not have been permitted by the United Kingdom. Nevertheless, the Government of the United Kingdom has stated in relation to Mr. Assange that these changes are "not retrospective" and so may not benefit him. A position is maintained in which his confinement within the Embassy is likely to continue indefinitely. The corrective legislation of the United Kingdom addressed the court's inability to conduct a proportionality assessment of the Swedish prosecutor's international arrest warrant (corrected by sect. 157 of the Anti-Social Behaviour, Crime and Policing Act 2014, in force since July 2014). The corrective legislation also barred extradition where no decision to bring a person to trial had been made (sect. 156).

Disposition

92. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Julian Assange is arbitrary and in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 7, 9 (1), (3) and (4), 10 and 14 of the International Covenant on Civil and Political Rights. It falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

93. Consequent upon the opinion rendered, the Working Group requests the Governments of Sweden and the United Kingdom to assess the situation of Mr. Assange, to ensure his safety and physical integrity, to facilitate the exercise of his right to freedom of movement in an expedient manner and to ensure the full enjoyment of his rights guaranteed by the international norms on detention.

94. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be to ensure the right of free movement of Mr. Assange and accord him an enforceable right to compensation, in accordance with article 9 (5) of the International Covenant on Civil and Political Rights.

[Adopted on 4 December 2015]

Annex

Individual dissenting opinion of Working Group member Vladimir Tochilovsky

1. The adopted opinion raises serious questions as to the scope of the mandate of the Working Group.

2. It is assumed in the opinion that Julian Assange has been detained in the Embassy of Ecuador in London by the authorities of the United Kingdom of Great Britain and Northern Ireland. In particular, it is stated that his stay in the Embassy constitutes "a state of an arbitrary deprivation of liberty".

3. In fact, Mr. Assange fled bail in June 2012 and, since then, has stayed on the premises of the Embassy, using them as a safe haven to evade arrest. Indeed, fugitives are often self-confined within the places where they evade arrest and detention. This could be some premises, as in Mr. Assange's situation, or the territory of a State that does not recognize the arrest warrant. However, these territories and premises of self-confinement cannot be considered as places of detention for the purposes of the mandate of the Working Group.

4. In regard to the house arrest of Mr. Assange in 2011 and 2012, it was previously emphasized by the Working Group that, where the person is allowed to leave the residence (as in Mr. Assange's case), it is "a form of restriction of liberty rather than deprivation of liberty … a measure which would then lie outside the Group's competence" (see E/CN.4/1998/44, para. 41 (e)). Mr. Assange was allowed to leave the mansion where he was supposed to reside while litigating against extradition in the courts of the United Kingdom. As soon as his last application was dismissed by the Supreme Court in June 2012, Mr. Assange fled bail.

5. The mandate of the Working Group is not without limits. By definition, the Working Group is not competent to consider situations that do not involve deprivation of liberty. For the same reason, issues related to fugitives' self-confinement, such as asylum and extradition, do not fall within the mandate of the Working Group (see, for instance, E/CN.4/1999/63, para. 67).

6. That is not to say that the complaints of Mr. Assange could not have been considered. There exist appropriate United Nations human rights treaty bodies and the European Court of Human Rights, which do have the mandate to examine such complaints regardless of whether they involve deprivation of liberty or not.

7. Incidentally, any further application concerning Mr. Assange may now be declared inadmissible in an appropriate United Nations body or the European Court of Human Rights on the matters that have been considered by the Working Group. In this regard, one may refer to the European Court decision in *Peraldi v. France* (2096/05) and the reservation of Sweden to the First Optional Protocol to the International Covenant on Civil and Political Rights.

8. For these reasons, I dissent.