

21/02/2016 11:23:32 PM

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Mr Assange

To The Hon. Malcolm Turnbull, MP
Prime Minister of Australia

Dear Prime Minister

Since August 2012, Julian Assange has been under the legal protection of the Ecuadorian Embassy in London. In 2014 Mr. Assange asked the United Nations Working Group on Arbitrary Detention (UNWGAD) to determine whether his detention was arbitrary and illegal. On the 5th of February this year the Working Group announced its decision. They decided Julian Assange has been arbitrarily detained in contravention of the international commitments made by the United Kingdom. This means there is no valid legal basis for his arrest by the United Kingdom should he leave the Ecuadorian Embassy.

In his submission to the Working Group, Mr. Assange claimed he has been deprived of his fundamental liberties against his will and the deprivation of his liberty is arbitrary and illegal. He further argued that there are no exceptions which apply to the obligation on the United Kingdom to recognize the asylum granted by Ecuador. Clearly the Working Group has agreed with these three points. They did not accept the often repeated claims made by the governments of the United Kingdom and Sweden.

This decision announces to the entire world Julian's treatment during this time by Sweden and the United Kingdom has been a complete travesty of justice. I humbly request the Australian Government advises the United Kingdom to return his passport and declare they have no valid legal reason to arrest or detain Mr. Assange. I also humbly request the Australian Government to advise the United Kingdom that since they participated in the process leading to Working Group's decision and submitted evidence to it, they must now abide by its decision. In view of the fact Mr. Assange has never been formally charged for any crime in Sweden and was held under a European Arrest Warrant only for questioning, I would humbly expect the Australian Government to provide its full support to Mr. Assange at this time.

Yours faithfully,

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09/02/2016 04:48:36 PM

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Mr Assange

To The Hon. Malcolm Turnbull, MP
Prime Minister of Australia

Dear Prime Minister

Since August 2012, Julian Assange has been under the legal protection of the Ecuadorian Embassy in London. In 2014 Mr. Assange asked the United Nations Working Group on Arbitrary Detention (UNWGAD) to determine whether his detention was arbitrary and illegal. On the 5th of February this year the Working Group announced its decision. They decided Julian Assange has been arbitrarily detained in contravention of the international commitments made by the United Kingdom. This means there is no valid legal basis for his arrest by the United Kingdom should he leave the Ecuadorian Embassy.

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Yours faithfully,

09/02/2016 12:41:57 AM

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Free Julian Assange

Dear Prime Minister

Since August 2012, Julian Assange has been under the legal protection of the Ecuadorian Embassy in London. In 2014 Mr. Assange asked the United Nations Working Group on Arbitrary Detention (UNWGAD) to determine whether his detention was arbitrary and illegal. On the 5th of February this year the Working Group announced its decision. They decided Julian Assange has been arbitrarily detained in contravention of the international commitments made by the United Kingdom. This means there is no valid legal basis for his arrest by the United Kingdom should he leave the Ecuadorian Embassy.

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Yours faithfully,

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08/02/2016 10:22:22 PM

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Australia Should Support Julian Assange

Dear Prime Minister,

Since August 2012, Julian Assange has been under the legal protection of the Ecuadorian Embassy in London. In 2014 Mr. Assange asked the United Nations Working Group on Arbitrary Detention (UNWGAD) to determine whether his detention was arbitrary and illegal. On the 5th of February this year the Working Group announced its decision. They decided Julian Assange has been arbitrarily detained in contravention of the international commitments made by the United Kingdom. This means there is no valid legal basis for his arrest by the United Kingdom should he leave the Ecuadorian Embassy.

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Yours faithfully,

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08/02/2016 03:37:09 PM

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Justice for Assange

To The Hon. Malcolm Turnbull, MP
Prime Minister of Australia

Dear Prime Minister

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Yours faithfully,

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08/02/2016 02:10:03 PM

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Australian citizen in arbitrary detention

Dear Prime Minister

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Yours faithfully,

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07/02/2016 04:31:18 PM

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Help set Julian Assange free

To The Hon. Malcolm Turnbull, MP
Prime Minister of Australia

Dear Prime Minister

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Yours faithfully,

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07/02/2016 12:30:34 PM

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ethics

Dear Prime Minister

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Yours faithfully,

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07/02/2016 12:05:45 PM

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Julian ASSANGE - an Australian citizen who needs your help

To The Hon. Malcolm Turnbull, MP
Prime Minister of Australia

Dear Prime Minister

Since August 2012, Julian Assange has been under the legal protection of the Ecuadorian Embassy in London. In 2014 Mr. Assange asked the United Nations Working Group on Arbitrary Detention (UNWGAD) to determine whether his detention was arbitrary and illegal. On the 5th of February this year the Working Group announced its decision. They decided Julian Assange has been arbitrarily detained in contravention of the international commitments made by the United Kingdom. This means there is no valid legal basis for his arrest by the United Kingdom should he leave the Ecuadorian Embassy.

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Yours faithfully,

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07/02/2016 11:46:47 AM

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Please protect Australian Julian Assange from extra-judicial kidnapping by the U.S.

To The Hon. Malcolm Turnbull, MP
Prime Minister of Australia

Dear Prime Minister

Since August 2012, Julian Assange has been under the legal protection of the Ecuadorian Embassy in London. In 2014 Mr. Assange asked the United Nations Working Group on Arbitrary Detention (UNWGAD) to determine whether his detention was arbitrary and illegal. On the 5th of February this year the Working Group announced its decision. They decided Julian Assange has been arbitrarily detained in contravention of the international commitments made by the United Kingdom. This means there is no valid legal basis for his arrest by the United Kingdom should he leave the Ecuadorian Embassy.

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Yours faithfully

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07/02/2016 11:26:40 AM

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Provide support to Mr Assange

To The Hon. Malcolm Turnbull, MP
Prime Minister

Dear Prime Minister,

Since August 2012, Julian Assange has been under the legal protection of the Ecuadorian Embassy in London. In 2014 Mr. Assange asked the United Nations Working Group on Arbitrary Detention (UNWGAD) to determine whether his detention was arbitrary and illegal. On the 5th of February this year the Working Group announced its decision. They decided Julian Assange has been arbitrarily detained in contravention of the international commitments made by the United Kingdom. This means there is no valid legal basis for his arrest by the United Kingdom should he leave the Ecuadorian Embassy.

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Yours faithfully,
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07/02/2016 09:57:50 AM

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Julian Assange

To The Hon. Malcolm Turnbull, MP
Prime Minister of Australia

Dear Prime Minister

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06/02/2016 11:33:48 PM

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Julian Assange

To The Hon. Malcolm Turnbull, MP
Prime Minister of Australia

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Yours faithfully,

s 22

2 March 2016

The Hon, Malcolm Turnbull, MP
Prime Minister of Australia
PO Box 6022, House of Representatives
Parliament House
CANBERRA. ACT. 2600



Dear Prime Minister,

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Yours faithfully,

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A large, solid grey rectangular box redacting the signature of the sender.

07/02/2016 04:00:15 PM

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Julian Assange immediate assistance to return home to Australia without hindrance from the US

Right Honourable Prime Minister Turnbull. "A United Nations human rights panel has concluded that Julian Assange is being arbitrarily detained in London in violation of international law. " Please could you assist Julian Assange to return home to Australia without hindrance by the US authorities. He may have allegations against him, in regards to sexual misconduct in Sweden but he has not been charged. We all know too well that the purpose of this guise is that the authorities in Sweden will submit him to the U.S. for interrogation for his apparent leak of information to the world. However, we should view these activities as electronic journalism. And the public has a right to know, of any subversive actions by any authorities in the world. We believe you have a duty of care and note in my passport it "requests all those whom it may concern to allow the bearer, an Australian Citizen, to pass freely without let or hindrance and to afford him or her every assistance and protection of which he or she may stand in need." So please Honourable Prime Minister Turnbull is it not time to protect Mr Julian Assange on his passage home.

07/02/2016 09:40:53 PM

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Julian Assange

dear prime Minister,

Now that the UN has declared Assange should be free to go, we must support him as an Australian citizen, and enable him to leave the captivity that he has been living under. Please help him to leave the UK and be free from persecution from the US. Australia has to bigger than this. We stood up for David Hicks, surely we should stand up for Assange!

Yours sincerely.

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06/02/2016 11:27:39 AM

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[Redacted]

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[Redacted]

Julian Assange Release

I as an Australian citizen is asking the Prime Minister of Australia you Sir Malcolm Turnbull contact the British Government and demand the return of Mr Assange's passport to him and demand his release as an Australian citizen from being held in unlawful custody. British Government has NO right to detain Mr Assange any longer and the UN has supported his release fore with. Mr Assange now has to be released immediately and his passport returned to him if not we as Australians are allowing an illegal incarceration of Mr Julian Assange and being an Australian Citizen I am appalled of our Government is not doing enough for Mr Assange's release.

06/02/2016 10:39:54 AM

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Spycatcher/Julian Assange

In view of the UN committee's ruling this week on the Assange case, Julie Bishop has stated that the Australian Government is seeking legal advice on the matter. One would hope that this "legal advice" would be coming from our Prime Minister, Malcolm Turnbull, in view of his brilliant handling and subsequent victory of the case in the "Spycatcher" trial in which the British government were trying to ban publication of this book in Australia. Surely there is no more valued opinion and advice to be sought than that from the man who won the case against the British government over the right to publish a book which the British government deemed to be threatening to their national security. The Australian public are waiting to hear Malcolm Turnbull's opinion. No public announcement directly from Malcolm Turnbull about this matter will make him appear weak and fearful of the U.K. and U.S. and not the courageous leader he was expected to be.

06/02/2016 08:08:14 AM

s 22

s 22

Julian Assange

From: s 22

Sent: Saturday, 6 February 2016 7:32 AM

To: 'Malcolm.Turnbull.MP@aph.gov.au';
'Julie.Bishop.MP@aph.gov.au'

Cc: 'offtherecord@crikey.com.au'

Subject: Julian Assange / Check out "The strange case of Julian Assange" on Crikey

Dear Malcolm & Julie

Julian Assange / Check out "The strange case of Julian Assange" on Crikey

s 22

You are both lawyers and you both understand the significance of the United Nations decision.

Julie you said on TV that it's "not binding" which I don't understand given that the UK is a signatory.

Can I commend the following article:

<http://www.crikey.com.au/2015/11/30/the-strange-case-of-julian-assange/>

What's to stop us asking the UK to accept the non appealed UN ruling and give Julian safe passage to Ecuador now eg Monday ??

Thanks and regards,

s 22

06/02/2016 12:10:01 AM

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UN panel ruling on the detention of Julian Assange

I commend you to support the release of Julian Assange from the Ecuadorian Embassy in London. It is your responsibility to ensure his safe release from his detainment. He has been Arbitrarily detained and it is now a UN decision and the responsibility of Australia to see him to Liberty. As a human who stands in a positive way for Freedom of Information and Human Rights the world needs to protect these very important standards. We do not want our future ruled by tyrannical actions. Thank you for your time and attention.

05/02/2016 07:51:21 AM

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Julian Assange

Australian Julian Assange has been in exile for a considerable amount of time, the Australian Government has betrayed his human rights and offered no support. The United Nations have now declared it a Violation. It is about time Australia showed some backbone and stood up to the US and rescued this great man.

DEPARTMENT OF THE PRIME MINISTER AND CABINET

PM&C
Secretary
Mr McKinnon
Ms Wood
Mr Stephens
Ms Manton

PMO
CoS

s 22

CABINET
SECRETARY

To: Prime Minister (for signature)

s 22

Recommendation - that you:

1. s 47C

Signed / Not Signed

MALCOLM TURNBULL

Date:

Comments:

Key Points:

1. s 22
2. On 5 February, the UN Working Group on Arbitrary Detention ruled that “the various forms of deprivation of liberty to which Julian Assange has been subjected constitute a form of arbitrary detention”. Mr Assange described the UN findings as “vindication”. Senator Ludlam said the decision was “a big deal for Australia ... The Australian Government should be lobbying now as they should have been doing for years, he should get his passport back and be free to go.”
3. In a public statement on 6 February, Foreign Minister Bishop confirmed she had spoken to Mr Assange’s legal team and she had restated a previous offer of consular assistance. Ms Bishop said she was seeking legal advice on the UN report’s implications for Mr Assange as an Australian citizen and had confirmed with his lawyers that the Government’s offer of consular assistance stood should he require it.

4. s 47C

Ridwaan Jadwat
Assistant Secretary
International Division
17 February 2016

Policy Officer: s 22
Phone no: s 22
Consultation: DFAT, FMO

ATTACHMENTS

ATTACHMENT A

s 47C

ATTACHMENT B INCOMING CORRESPONDENCE

30/03/2016 11:00:19 PM

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s 22

Julian Assange

Prime Minister Mr. Turnbull. s 22
reporting on Julian Assange. I'd like to know what you as Prime
Minister have done for Mr. Assange since you have been in Office? Australia
is still a part of the Commonwealth, what is Australian doing with regards
to Britain defying the UN's report? Is Australia in contact with Mr.
Assange? If you can add anything that would be relevant to Mr. Assange and
his situation in England, I'd really appreciate your assistance.

s 22

News story

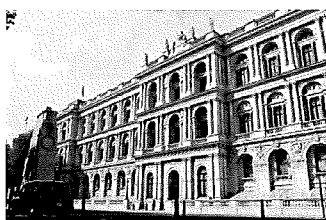
UK submits response to UN Working Group on Assange case

- English
- Español (<https://www.gov.uk/government/news/uk-submits-response-to-un-working-group-on-assange-case--2.es-419>)

From: Foreign & Commonwealth Office
(<https://www.gov.uk/government/organisations/foreign-commonwealth-office>) and The Rt Hon Hugo Swire MP (<https://www.gov.uk/government/people/hugo-swire>)

First published: 24 March 2016

The United Kingdom has submitted a formal response to the UN Working Group on Arbitrary Detention (WGAD) relating to the case of Julian Assange.



The response rebuts the WGAD's opinion, announced on 5 February, that the actions of the UK and Sweden, in relation to the Assange case, constituted arbitrary detention, and that the detention violated his human, civil and political rights.

Mr Assange has been resident in the Ecuadorean Embassy in London since August 2012.

The UK made clear on 5 February that it would contest the WGAD's opinion, and has now submitted the formal "request for consideration".

The key points from the rebuttal are:

- The Working Group's Opinion is deeply flawed and Mr Assange has never been the subject of arbitrary detention. His human rights have been protected throughout the process and will continue to be protected if and when he is extradited to Sweden.
- Mr Assange was arrested following the issue by Sweden of a European Arrest Warrant in connection with serious sexual offence allegations. Mr Assange was refused bail and therefore detained for 10 days in Wandsworth Prison. His detention during that period was absolutely in line with the relevant legislation and regulations.
- The decision to extradite Mr Assange was made by the Magistrate's Court, but Mr Assange appealed first to the High Court and subsequently to the Supreme Court. He lost at all stages. The fact that the court process took some 18 months cannot be considered excessive or unfair in any way. During this period he was granted bail and so cannot be considered to have been detained.

Foreign and Commonwealth Office Minister Hugo Swire said:

“ The original conclusions of the UN Working Group are inaccurate and should be reviewed. We want to ensure the Working Group is in possession of the full facts. Our request for a review of the Opinion sets those facts out clearly. Julian Assange has never been arbitrarily detained by the UK, and is in fact voluntarily avoiding lawful arrest by choosing to remain in the Ecuadorean Embassy. The UK continues to have a legal obligation to extradite him to Sweden.”

The UN Working Group is not a judicial body, and its opinions are not legally binding. The Working Group’s decision on whether or not to review their opinion will be made during the next WGAD session, beginning 18th April in Geneva.

Further information

- Follow Foreign Office Minister Hugo Swire on Twitter @HugoSwire (<https://twitter.com/HugoSwire>)
- Follow the Foreign Office on Twitter @foreignoffice (<https://twitter.com/foreignoffice>)
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s 22

LH633335L

Title: UK: Assange: PM Cameron comments in Parliament
MRN: LH633335L 11/02/2016 06:19:59 PM GMT
To: Canberra
Cc: RR : Geneva UN, Santiago De Chile, Stockholm, Washington
From: London
From File:
EDRMS Files:
References: LH44438H, LH44430H
Response: Routine, Information Only

 UNCLASSIFIED

Summary

During Prime Minister's Questions on 10 February, PM Cameron was asked about the UN Working Group on Arbitrary Detention's opinion regarding Julian Assange. In response, Cameron said "It was a ridiculous decision. This is a man with an outstanding allegation of rape against him. He barricaded himself in the Ecuadorian Embassy, yet claims that he was arbitrarily detained. The only person who detained him was himself. What he should do is come out of the embassy and face the arrest warrant against him. He is being asked to stand trial in Sweden—a country with a fair reputation for justice. He should bring to an end this whole sorry saga."

Full Hansard extract:

Victoria Atkins (Louth and Horncastle) (Conservative): Julian Assange is accused of rape and is on the run. Despite that, a United Nations panel that nobody has ever heard of declared last week that he has been "arbitrarily detained" and is somehow deserving of compensation. Does my right hon. Friend agree that that was a nonsensical decision, that Mr Assange should hand himself over to the Swedish prosecutors and that if anyone is deserving of compensation, it is the British taxpayer, who has had to pay £12 million to police his Ecuadorian hideout?

The Prime Minister: My hon. Friend is absolutely right. It was a ridiculous decision. This is a man with an outstanding allegation of rape against him. He barricaded himself in the Ecuadorian embassy, yet claims that he was arbitrarily detained. The only person who detained him was himself. What he should do is come out of the embassy and face the arrest warrant against him. He is being asked to stand trial in Sweden—a country with a fair reputation for justice. He should bring to an end this whole sorry saga.

text ends

Sent by: s 22

Prepared by:

Approved by:

Topics: CONSULAR/Case Management, HUMAN RIGHTS/General, LEGAL/International Law, POLITICAL-ECONOMIC/Domestic Political, POLITICAL-ECONOMIC/International Political

Press release
5 February 2016

UK disputes UN working group opinion on Julian Assange

The UK will formally contest the opinion of the UN Working Group on Arbitrary Detention that Julian Assange is a victim of arbitrary detention.

A Government spokesperson said:

“This changes nothing. We completely reject any claim that Julian Assange is a victim of arbitrary detention. The UK has already made clear to the UN that we will formally contest the working group’s opinion.

“Julian Assange has never been arbitrarily detained by the UK. The opinion of the UN Working Group ignores the facts and the well-recognised protections of the British legal system. He is, in fact, voluntarily avoiding lawful arrest by choosing to remain in the Ecuadorean embassy. An allegation of rape is still outstanding and a European Arrest Warrant in place, so the UK continues to have a legal obligation to extradite him to Sweden. As the UK is not a party to the Caracas Convention, we do not recognise ‘diplomatic asylum’.

“We are deeply frustrated that this unacceptable situation is still being allowed to continue. Ecuador must engage with Sweden in good faith to bring it to an end. Americas Minister Hugo Swire made this clear to the Ecuadorean Ambassador in November, and we continue to raise the matter in Quito.”

~~CONFIDENTIAL~~

S 22

SC12896H

s 33(a)(iii), s 33(b)

2. In a media conference following the WGAD opinion, Patiño said it was now "time for Julian Assange to be freed", that the WGAD's opinion was "consistent with the [Ecuadoran] government's position regarding the arbitrary action exercised in the case" and that "the Ecuadoran government was committed to safeguarding the security of the Australian founder of Wikileaks against attempted violations of his human rights and political persecution".

3. Patiño questioned the UK's decision "not to recognise the opinion of the WGAD despite its recognition of the institution" and pointed out that "the WGAD's decision makes it perfectly clear that Assange's situation involved political persecution, a fact proven by the reality that over the course of five years and three forms of detention, Assange had not stood trial nor been sentenced for crimes for which he had been accused". Additionally, Mr Assange had not been permitted to "revise nor have access to documents pertaining to his case, which is a fundamental right of any person who has been involved in a legal investigation". Patiño further commented on the welfare of Assange, noting that due to the lack of medical care available within the Ecuadoran Embassy in London, Assange's case now involved a "humanitarian angle" due to a shoulder problem he was experiencing.

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

s 22

SC12896H

4. Patiño said the case would now be analysed from a legal and international diplomatic point of view, including an analysis of the reactions by all countries involved following the WGAD's decision. This analysis would include reviewing the official response from Sweden to the UN opinion, which Patiño said was "expected to take place once Swedish authorities in charge of the case returned from holidays".

s 33(a)(iii), s 33(b)

Sent by: Tim Kane
Prepared by: s 22
Approved by: HOM
Topics:

s 33(a)(iii), s 33(b)

s 22

~~CONFIDENTIAL~~

~~PROTECTED~~

s 22

LH44438H

Title: UK: Assange: UN Working Group on Arbitrary Detention opinion: UK reactions

MRN: LH44438H 05/02/2016 07:33:53 PM GMT

To: Canberra

Cc: RR : Santiago De Chile, Stockholm, Washington

From: London

From File:

EDRMS Files:

References: GU630425L, LH44430H, ST12337H, ST12336H
 The cable has the following attachment/s -
 comments-by-the-government-of-sweden-re-opinion-no -542015.pdf
 160203 UK Perm Rep letter to Chair of WGAD.pdf
 160205 Transcript of Assange statement to the press.docx
 160205 UK disputes UN working group opinion on Julian Assange.docx

Response: Routine, Information Only

~~PROTECTED~~

Summary

The UK has publicly rejected the UN Working Group on Arbitrary Detention's opinion on Assange, saying: 'This changes nothing. We completely reject any claim that Julian Assange is a victim of arbitrary detention. The UK has already made clear to the UN that we will formally contest the working group's opinion.' Foreign Secretary Hammond said the opinion was 'frankly ridiculous' and called Assange a 'fugitive from justice'. Hammond has instructed the FCO to prepare a detailed, systematic legal analysis in support of the UK's request for a review of the opinion. Assange and his lawyers held a press conference hailing the opinion as a 'resounding victory'.

Further to LH44430H, cable reports on UK reactions following the 5 February public release of the UN Working Group on Arbitrary Detention's (WGAD) opinion regarding Julian Assange. Cable also reports on a press conference held by Assange and his lawyers, and Assange's public appearance on the balcony of the Ecuadorian Embassy, both on 5 February.

UK public reactions

2. Foreign Secretary Hammond told UK media that the WGAD opinion was 'frankly ridiculous'. He said 'I reject the decision of this working group. It is a group made up of lay people and not lawyers. Julian Assange is a fugitive from justice. He is hiding from justice in the Ecuadorian embassy. He can come out any time he chooses ... But he will have to face justice in Sweden if he chooses to do so. This is frankly a ridiculous finding by the working group and we reject it'. Hammond tweeted '#Assange is a fugitive from justice, voluntarily hiding in the Ecuadorian Embassy. I reject the report from #UNWGAD'.

3. A spokesperson for the Prime Minister told the media: 'It's ridiculous. He has never been arbitrarily detained in this country. It is entirely his choice to remain in the embassy and he's avoiding lawful arrest by choosing to remain there... It seems very strange that he is not willing to go to Sweden and face up to what are some very serious allegations.'

~~PROTECTED~~

4. The media is also reporting that Parliamentary Under-Secretary of State for the Ministry of Justice, Dominic Raab, has labelled the WGAD opinion 'upside down'. He is reported to have said: 'What is undermining the credibility of the UN is when reports like this come out, which many people will look at and intuitively think lack moral clarity... We are not going to cave in and allow someone accused of rape to evade justice.'

5. A statement issued by a government spokesperson (attached) said: 'This changes nothing. We completely reject any claim that Julian Assange is a victim of arbitrary detention. The UK has already made clear to the UN that we will formally contest the working group's opinion.'

s 22 (part), s 33(a)(iii) and s 33(b)



Press conference and balcony appearance

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s 22

LH44438H

11. At noon on 5 February, lawyers Jennifer Robinson s 33(a)(iii) and Melinda Taylor gave a press conference in London, with Assange appearing by videolink. Robinson said the opinion was a 'resounding victory for Assange'. Taylor said the opinion dispelled the myths that Assange was a fugitive from justice and that he could walk out of the embassy at any time. She labelled the opinion a 'damning indictment' and said Assange was the victim of a miscarriage of justice caused by the actions of both the UK and Sweden. She concluded by saying 'we need the UK government to step up to the plate so that Julian Assange can come out into the light'. They made no mention of their meeting with Ms Bishop.

12. In his statement to the press (transcript prepared by the FCO attached), Assange said the Foreign Secretary's comments insulted the UN. He said the opinion was a serious finding in international law and that the lawfulness, or otherwise, of his 'detention' was now a matter of 'settled law'. Neither the UK nor Sweden had 'appealed the decision' (comment: as per para 6 above, the UK will seek a review of the decision), and could not now object after having subjected themselves to the working group's 'jurisdiction'. It was now up to the UK and Sweden to 'implement the findings'. Assange did not take any questions from the press.

13. Later the same day, at around 4pm, Assange delivered another statement from the balcony of the Ecuadorian Embassy, in front of a large crowd. He called the WGAD opinion a 'sweet victory' and reiterated many of the points in his statement to the press. Again, he did not take any questions.

s 33(a)(iii) and s 33(b)

text ends

Sent by:

s 22

Prepared by:

Approved by:

Andrew Rose

Topics:

CONSULAR/Case Management, HUMAN RIGHTS/General, LEGAL/International Law, POLITICAL-ECONOMIC/International Political

s 22

~~PROTECTED~~

s 22

GU630469L

Title: UN: Human Rights: Press statement - Independent Expert on the promotion of a democratic and equitable international order - Julian Assange

MRN: GU630469L 15/02/2016 07:06:44 PM CET

To: Canberra

Cc: PP : London, Stockholm, UN New York

From: Geneva UN

From File: GE16/26

EDRMS Files:

References: GU630425L
The cable has the following attachment/s -
UN rights expert urges the UK and Sweden to give good example to the world and implement the Assange ruling.pdf

Response: **Priority, Information Only**

U N C L A S S I F I E D

Summary

Further to reftel, the Independent Expert on the promotion of a democratic and equitable international order (IE) has issued a press statement urging the UK and Sweden to give a good example to the world and accept the findings and implement the recommendations in good faith of the opinion of the Working Group on Arbitrary Detention (WGAD) in the Julian Assange case. The IE said States should comply with hard law and soft law and that "whistleblowers are key human rights defenders". Full statement is attached.

text ends

Sent by: s 22

Prepared by:

Approved by:

Topics: HUMAN RIGHTS/General, IMMIGRATION & ENTRY CONTROL/General, LEGAL/International Law, UN & COMMONWEALTH/UN Discussions

s 22

NEWS RELEASE



UN rights expert urges the UK and Sweden to give good example to the world and implement the Assange ruling

GENEVA (15 February 2016) – United Nations human rights expert Alfred de Zayas today called on the Governments of the United Kingdom and Sweden to accept and implement without delay the findings and recommendations of the UN Working Group on Arbitrary Detention* in the case of Julian Assange.

The UN Independent Expert on the promotion of a democratic and equitable international order recalled that a just and sustainable international order requires that States respect, promote and fulfill their human rights treaty obligations and observe the recommendations of human rights treaty-bodies, working groups and rapporteurs.

“The findings of the Working Group on Arbitrary Detention should be accepted and their recommendations implemented in good faith. Especially those States who claim to be at the vanguard of human rights should give good example, even if they do not agree with the conclusions of UN experts,” he said.

“The international order depends on the consistent and uniform application of international law, and is undermined when States pick and choose. The concept of human dignity is holistic. An *à la carte* approach to human rights erodes the credibility of the entire system,” the expert stressed.

The opinion of the Working Group on Arbitrary Detention ruled that Mr. Assange’s detention was contrary to various provisions of the International Covenant on Civil and Political Rights and called upon the UK and Sweden to ensure his safety and physical integrity, to facilitate the exercise of his right to freedom of movement, and to pay him compensation.

“The international order is strengthened when all States comply not only with binding treaty obligations, but also with the recommendations of UN bodies. Not only ‘hard law’ but also ‘soft law’ commitments and human rights pledges should be given effect.” Mr. de Zayas added. “If a State is truly committed to a philosophy of human rights, it cannot limit the enjoyment of those rights by engaging in narrow pedestrian positivism or invoking technical distinctions or loopholes in an attempt to escape ethical obligations.”

“Whistleblowers are key human rights defenders in the twenty-first century, in which a culture of secrecy, behind-closed-door deals, disinformation, lack of access to information, 1984-like surveillance of individuals, intimidation and self-censorship lead to gross violations of human rights,” highlighted the Independent Expert. “Secrecy and intimidation are irreconcilable with the fundamental right under article 19 ICCPR to receive and impart information

and to freedom of expression as emphasized by the former Special Rapporteur on freedom of opinion and expression.”

“It is important that countries that regularly engage in naming and shaming of other countries accept United Nations rulings when they themselves are implicated. It is a matter of intellectual honesty. Prompt implementation of the Working Group’s Opinion would set an example for the rest of the world,” Mr. de Zayas concluded.

(*) See the Working Group on Arbitrary Detention’s Opinion in the case of Mr. Julian Assange (No. 54/2015): <http://www.ohchr.org/Documents/Issues/Detention/A.HRC.WGAD.2015.docx>

ENDS

Mr. Alfred de Zayas (United States of America) was appointed as the first Independent Expert on the promotion of a democratic and equitable international order by the Human Rights Council, effective May 2012. He is currently professor of international law at the Geneva School of Diplomacy. Learn more, log on to:
<http://www.ohchr.org/EN/Issues/IntOrder/Pages/IEInternationalorderIndex.aspx>

The Independent Experts are part of what is known as the Special Procedures of the Human Rights Council. Special Procedures, the largest body of independent experts in the UN Human Rights system, is the general name of the Council’s independent fact-finding and monitoring mechanisms that address either specific country situations or thematic issues in all parts of the world. Special Procedures’ experts work on a voluntary basis; they are not UN staff and do not receive a salary for their work. They are independent from any government or organization and serve in their individual capacity.

UN Human Rights, Country Pages:

Sweden: <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/SEIndex.aspx>

United Kingdom: <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/GBIndex.aspx>

For more information and media requests, please contact Ms. Imogen Canavan (+41 22 917 9690 / ie-internationalorder@ohchr.org)

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s 22

GU630425L

Title: UN: Human Rights: Working Group Arbitrary Detention (WGAD) - Opinion - Assange

MRN: GU630425L 05/02/2016 10:47:24 AM CET

To: Canberra

Cc: PP : London, UN New York

From: Geneva UN

From File: GE16/26

EDRMS Files:

References: The cable has the following attachment/s -
A.HRC.WGAD.2015.docx
Press statement - Julian Assange arbitrarily detained by Sweden and the UK.docx

Response: Priority, Information Only

U N C L A S S I F I E D

Summary

On 5 February 2016, the Working Group on Arbitrary Detention (WG) released its opinion on the Assange case. The WG rendered the opinion that the deprivation of liberty of Assange is arbitrary and in contravention of the UDHR and the ICCPR. The WG requests Sweden and the UK to ensure Assange's safety and physical integrity and to facilitate the exercise of his right to freedom of movement and to accord Assange compensation. The Ukrainian member of the WG issued a dissenting opinion arguing that "premises of self-confinement cannot be considered as places of detention for the purposes of the mandate of the WG". The WG released a media statement on its opinion.

On 5 February 2016, the Working Group on Arbitrary Detention (WG) released its opinion the Assange case. The opinion was adopted during the WGs last session (13 November - 4 December 2015). The WG media release and full opinion are attached.

2. The WG rendered the opinion that the deprivation of liberty of Assange is arbitrary and in contravention of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The WG requests the Governments of Sweden and the UK to ensure Assange's safety and physical integrity and to facilitate the exercise of his right to freedom of movement in an expedient manner. The WG consider the adequate remedy would be to ensure the right to free movement of Assange and accord him compensation.

3. The Opinion includes an appendix of an individual dissenting opinion of WG member Vladimir Tochilovsky (Ukraine). Tochilovsky states that the "adopted Opinion raises serious question as to the scope of the mandate of the Working Group". Tochilovsky states that the Opinion assumes that Assange has been detained in the Embassy of Ecuador in London by the authorities of the UK, constituting this as "a state of arbitrary deprivation of liberty". Tochilovsky says "in fact, Mr Assange fled the bail in June 2012 and since then stays at the premises of the Embassy using them as a safe haven to evade arrest" and that these "territories and premises of self-confinement cannot be considered as places of detention for the purposes of the mandate of the WG".

4. Tochilovsky further states that there exists the appropriate UN human rights treaty bodies and the European Court of Human Rights that do have mandate to examine such complaints regardless whether they involve deprivation or liberty or not. He notes that any further application of Assange may now be declared as inadmissible in an appropriate UN body or European Court of Human Rights on matters that have been considered by the WG.

4. The WG also released a media statement on its opinion which noted that opinions of the WG are legally-binding to the extent they are based on binding international human rights law, such as the ICCPR. The binding nature of its opinions derives from the collaboration by States in the procedure, adversarial nature of its findings and also by the authority given by the WG by the UN Human Rights Council. The Opinions of the WG are also considered authoritative by prominent international and regional judicial institutions, including the European Court of Human Rights.

5. The full opinion and statement are attached.

text ends

Sent by:	s 22
Prepared by:	
Approved by:	
Topics:	HUMAN RIGHTS/General, IMMIGRATION & ENTRY CONTROL/General, LEGAL/International Law, UN & COMMONWEALTH/UN Discussions

Advance Unedited Version

Distr.: General
22 January 2016

Original: English

Human Rights Council
Working Group on Arbitrary Detention

**Opinions adopted by the Working Group on Arbitrary
Detention at its seventy-fourth session,
30 November – 4 December 2015**

**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. The Government of Sweden replied to the communication of 16 September 2014 on 3 November 2014. The Government of the United Kingdom of Great Britain and Northern Ireland replied to the communication of 16 September 2014 on 13 November 2014. Sweden and the United Kingdom of Great Britain and Northern Ireland 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);
 - (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

* In accordance with rule 5 of the Methods of Work, Ms. Leigh Toomey did not participate in the discussion of the case. Individual dissenting opinion of Mr. Vladimir Tochilovsky is appended to the present opinion.

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 for reasons of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation or disability or other status, that aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

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

5. The source submitted that Mr. Assange has been detained since 7 December 2010, including 10 days in isolation in London's Wandsworth prison; 550 days under house arrest, and thereafter detained in the Embassy of the Republic of Ecuador in London, United Kingdom. The source submitted that both the Governments of the United Kingdom of Great Britain and Northern Ireland and Sweden are the forces responsible for holding the detainee under custody.

6. The source informed that Mr. Assange applied for political asylum on 19 June 2012 and was granted asylum by the Republic of Ecuador on 16 August 2012. It was alleged that Sweden refused to recognize the political asylum granted to Mr. Assange. According to the source, Sweden insisted that Mr. Assange must have given up his right to political asylum and been extradited to Sweden, without any guarantee of *non-refoulement* to the United States where he faced, in its view, a well-founded risk of political persecution and cruel, inhumane and degrading treatment.

7. The source informed that Sweden issued a European Arrest Warrant against Mr. Assange for the purpose of obtaining his presence in Sweden for questioning in relation to a claimed investigation. No decision has yet been made as to whether there will be a prosecution and the investigation remains at the 'preliminary investigation' phase. Mr. Assange has not been charged with any crime in Sweden. Consequently, the source argued, Mr. Assange did not have the formal rights of a defendant, such as access to potentially exculpatory material.

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

9. The source submitted that during the period of his detention, Mr. Assange had been deprived of a number of his fundamental liberties. It argued that each aspect of the following circumstances has contributed an arbitrary element whose consequence had been or had become arbitrary detention. The key elements are:

- i. Inability of Mr. Assange to access the full-intended benefit of the grant of asylum by the Republic of Ecuador in August 2012;

- ii. The continuing and disproportionate denial to him of such access over a period of time in which its impact had become cumulatively harsh and disproportionate;
 - iii. The origins of the justification relied upon for his arrest to be pursued by Sweden under a European Arrest Warrant, and the way in which that request was validated and pursued with continuing effect to the present time.
10. The source emphasized 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, inhumane treatment, and physical harm. The Republic of Ecuador granted Mr. Assange political asylum in August 2012, recognizing that he would face those well-founded risks if he were extradited to the United States. The only protection he had from that risk at the time was to stay in the confines of the Embassy; 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 on Arbitrary Detention had 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 – and thereby facing a well-founded risk of persecution. In its view, the European Court of Human Rights and the United Nations High Commissioner of Refugees similarly adhere to this principle.
12. The source submits that Mr. Assange was deprived of his liberty against his will and his liberty had been severely restricted, against his volition. An individual 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 Ecuadorian Embassy would require him to renounce his right to asylum and expose himself to the very persecution and risk of physical and mental mistreatment that his grant of asylum was intended to address. His continued presence in the Embassy cannot, therefore, be characterised as 'volitional'.
13. The source argues that Mr. Assange's detention is arbitrary, and falls under Categories I, II, III and IV as classified by the Working Group. In particular, the context of his deprivation of liberty has arisen from the failure of Sweden which initiated a process against him to obtain his extradition, in the face of contradictory wishes expressed by "complainants", having not established a *prima facie* case, and refusing, unreasonably and disproportionately, to achieve a process of questioning of him, if desired, through the normal processes of mutual assistance. Further, by his offer of co-operation in facilitating a number of alternative methods short of being extradited to Sweden – where it is further stated as a matter of record, that he will then be imprisoned in Sweden on arrival and as a foreigner with no ties to Sweden, in custody until trial. Further, Mr. Assange is under constant surveillance and the conditions in which he of necessity remains do not adhere to the minimum rules for detainees.
14. The source submits that Mr. Assange has been deprived of fundamental liberties against his will and the deprivation of Mr. Assange's liberty is arbitrary and illegal. The arbitrary nature of Mr. Assange's confinement in the Embassy of Ecuador in London is grounded in the following factors:
15. Sweden is obliged by applicable law and Convention obligations to recognise 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 recognised under customary international law.
16. The disproportionate nature of the actions taken by the Swedish prosecutor, including the insistence upon the issuing of 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). For over two years, the Prosecutor has refused to consider alternative mechanisms, which would allow Mr. Assange to be interviewed in a manner, which was compatible with his right to asylum. The disproportionality of the Prosecutor's decision is also 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*.

17. 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 United States of America. Any hypothetical investigative inconveniences regarding the interview 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 in violation of Mr. Assange's right to a speedy resolution of the allegations against him, as per Article 14 (1) of the International Covenant on Civil and Political Rights.

18. 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 access to exculpatory evidence, Mr. Assange has also been denied the opportunity to defend himself against the allegations. The Prosecutor is also fully aware that the practical consequence of this decision is that Mr. Assange is compelled to remain in the confinement of the Ecuadorian Embassy. This failure to consider alternative remedies has therefore consigned Mr. Assange to a lengthy pre-trial detention, which greatly exceeds any acceptable length for an uncharged person. The duration of such detention is *ipso facto* incompatible with the presumption of innocence.

19. Since both the Swedish Prosecutor and the 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 light of the length of this detention, i.e. his confinement in the Ecuadorian Embassy. According to the source, Mr. Assange is effectively serving a sentence for a crime for 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 sentence if Mr. Assange were to be convicted of any crime. His continued confinement therefore exposes him to a likely violation of *nemo debet bis vexari pro una et eadem causa*; if convicted in Sweden, he will be forced to serve a further sentence in relation to conduct for which he has already been detained. This is contrary to Article 14 (7) of the ICCPR.

20. Indefinite nature of this detention, and the absence of an 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 recognise Mr. Assange's confinement as a form of detention, and as such he has had no means to seek judicial review as concerns the length and necessity of such confinement in the Embassy. Mr. Assange has been continuously subjected to highly invasive surveillance for the last four years. He has never been disclosed the legal basis for such particular surveillance measures, and in fact has little ability to do so as the United States national security investigation against him is still underway. 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 must be established by law, and upon expiry of that period, the detainee must be automatically released.

21. Absence of minimum conditions accepted for prolonged detention of this nature (such as medical treatment and access to outside areas) (Category III): the Embassy of the Republic of Ecuador in London is not a house or detention centre equipped for prolonged pre-trial detention and lacks 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

22. In the communications addressed to the Government of Sweden and the Government of the United Kingdom of Great Britain on 16 September 2014, the Working Group transmitted the allegations made by the source. The Working Group stated that it would appreciate 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 to the communication of 16 September 2014 on 3 November 2014. The Government of the United Kingdom of Great Britain replied to the communication of 16 September 2014 on 13 November 2014.

23. According to the Government of Sweden, on 18 November 2010, a Swedish prosecutor requested that Mr. Assange should be detained in his absence on probable cause suspected of rape, two counts of sexual molestation and unlawful coercion. On the same day, the Stockholm District Court decided to detain Mr. Assange in his absence. The decision was upheld by the Svea Court of Appeal on 24 November 2010. In order to execute the detention order, the Swedish prosecutor issued an international arrest warrant as well as a European Arrest Warrant (Council Framework Decision, 2002/584/JHA, hereinafter referred to as the "EAW").

24. As understood by 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 EAW. This 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 EAW, Mr. Assange was apprehended in the United Kingdom and was detained there between 7 and 16 December 2010. He was thereafter subject to certain restrictions, such as house arrest. On 16 August 2012, Mr. Assange was granted asylum by the Republic of Ecuador and he has since June 2012 resided at the Ecuadorian Embassy in London.

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

26. According to the source, Sweden insisted that Mr. Assange must give up his right to political asylum and be extradited to Sweden, without any guarantee of *non-refoulement* to the United States. According to the source, Mr. Assange faces a well-founded risk of political persecution and cruel, inhumane and degrading treatment. In this respect, the Government would like to submit the following.

27. In its reply, the Government of Sweden emphasized that it is important that all countries act in accordance with international human rights standards, including their treaty obligations.

28. The Government firstly found it pertinent to clarify the difference between the procedures pertaining to an EAW 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 on EU-law and the common area for justice and the principle of mutual recognition of judicial decisions and judgements. The EAW applies throughout the EU and it provides improved and simplified judicial procedures designed to surrender people for

the purpose of conducting *inter alia* a criminal prosecution. In the current case, an EAW has been issued by a Swedish prosecutor due to the fact that Mr. Assange is suspected of serious crime in Sweden and has been detained in his absence for those crimes.

29. The procedures pertaining to extradition is based on multilateral and bilateral treaties as well as on Swedish law, i.e. the Act on Extradition (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 offense is considered to be a military offense or a political offense, extradition may not be granted. Furthermore, an extradited person may not have the death penalty imposed for the offence. A decision on extradition is taken by the Government, after an investigation and opinion by the Prosecutor General's Office and, in case the person sought does not consent to extradition, a subsequent decision by the Swedish Supreme Court. Should the Supreme Court find that there are any obstacles to extradition, the Government is bound by this decision.

30. The Government of Sweden found it was important to emphasise that, to this date, no request for extradition regarding Mr. Assange has been directed to Sweden. Any discussion about an extradition of Mr. Assange to a third state is therefore strictly hypothetical. Furthermore, as has been explained above, any potential decision for extradition must be preceded by a thorough and careful 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 an EAW, 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 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.

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

32. In relation to the submission by the source that Sweden is obliged by applicable law and Convention obligations to recognise the diplomatic asylum granted to Mr. Assange by the authorities of the Republic of Ecuador, the Government submitted the following.

33. 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 would also like to emphasise that the Latin American Convention on Diplomatic Asylum 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.

34. It should furthermore be noted that according to relevant international instruments, including the Latin American Convention on Diplomatic Asylum, the right to seek and enjoy asylum does not apply if an applicant as ground 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). 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 legal frameworks in this respect.

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

36. The source further alleges that Mr. Assange's detention is arbitrary, and falls under Categories I, II, III and IV as classified by the Working Group. In this regard, the Government of Sweden firstly noted that the source has not explained how the situation of Mr. Assange corresponds to the above-mentioned criteria adopted by the Working Group on Arbitrary Detention. For example, the Government noted that, except for the source's mentioning of 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.

37. In any case, the Government contests that Mr. Assange is being deprived of his liberty in violation of the criteria adopted by the Working Group and that, accordingly, the Minimum Rules for the Treatment of Prisoners would apply to his situation. In this regard, the Government notes that Mr. Assange, voluntarily, has chosen to reside at the Ecuadorian Embassy. Mr. Assange is free to leave the Embassy at any point and 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 due 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 Ecuadorian Embassy and the EAW issued by the Swedish authorities, cf. Opinion No. 9/2008 (Yemen), and Opinion No. 30/2012 (Islamic Republic of Iran). The Government holds that Mr. Assange is free to leave the Ecuadorian Embassy at any point in time.

38. 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 following.

39. 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 investigation 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.

40. It may be added that since 1995, the European Convention on Human Rights, as well as the Additional Protocols ratified by Sweden, form part of Swedish law. Article 6 of the Convention is therefore an integrated part of Swedish legislation. Hence, the Swedish legislation regarding the criminal procedure, including the preliminary investigations, meets the requirements of the Convention. In light of the above, the submission that Mr. Assange does not have the formal rights of a defendant lacks merit.

41. As regards the submission that Mr. Assange's deprivation of liberty has arisen from Sweden's failure in refusing to consider alternative mechanisms and to question him through the procedures of mutual legal assistance, the Government holds the following.

42. To begin with, according to the Swedish Instrument of Government (1974:152) the Swedish Government may not interfere in an ongoing case handled by a Swedish public authority. Swedish authorities, including the Office of the Prosecutor and the courts, are thus independent and separated from the Government. In the case at hand, the Swedish prosecutor in charge of the preliminary investigation has determined that Mr. Assange's personal 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.

43. As regards Mr. Assange's potential detention in Sweden, the Government would like 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, where Mr. Assange attends personally. Thus, it is always for the district court to decide upon the issue of whether Mr. Assange should be detained or released.

44. The source also submits that the Stockholm District Court in its decision on detention on 16 July 2014 refused to acknowledge Mr. Assange's right to asylum. In this respect, the Government may clarify the following.

45. In its decision on 16 July 2014 (case No. B 12885-10), the Stockholm District Court ruled exclusively on the matter of whether Mr. Assange should continue to be detained in his absence. Essentially, the District Court stated the following. As a result of the EAW, Mr. Assange has been detained in the period between 7 to 16 December 2010 and he has thereafter been subject to various restrictions. These 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 Ecuadorian embassy 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 District Court further stated that it does 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 District Court makes no reference to Mr. Assange's potential right to asylum, as suggested by the source.

46. In sum, and 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* contrary to international human rights obligations to the United States; that Sweden is not obliged by applicable law and Convention obligations to recognise 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 international law as well as other treaty obligations are being complied with by the Swedish authorities when handling the criminal investigation related to Mr. Assange.

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

48. The Ecuadorean Government granted Mr. Assange 'diplomatic' asylum under the 1954 Caracas Convention, not 'political' asylum. The UK is not a party to the Caracas Convention and does not recognise 'diplomatic' asylum. Therefore the UK is under no legal obligations arising from Ecuador's decision.

49. The UK Government considers that the use of the Ecuadorean Embassy premises to enable Mr. Assange to avoid arrest is incompatible with the Vienna Convention on Diplomatic Relations. Mr. Assange is wanted for interview in Sweden in connection with allegations of serious sexual offences. He is subject to a European Arrest Warrant in relation to these allegations. The UK has a legal obligation to extradite him to Sweden.

50. The British Government takes violence against women extremely seriously and co-operates with European and other partners in ensuring that justice is done.

Comments from the source

51. On 14 November 2014, the source submitted its comments to the responses of the Government of Sweden.

52. According to the source, the Government of Sweden and the Government of the United Kingdom of Great Britain 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 (EAW and Interpol Red Notice) in December 2010, without judicial oversight, Mr. Assange has still not been charged.

53. 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 Ecuadorian Embassy from June 2012. Police continued to surround the embassy, continued to obstruct his asylum and continued their attempts to surveil his visitors and activities both physically and electronically.

54. On 29 October 2014, in response to an invitation by the United Kingdom, and prior to Sweden's response, the Swedish prosecutor again refused to move the case forward by questioning Mr. Assange. His 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 Swedish allegations.

55. The source considered that the transmitted response clearly has set out the Swedish Government's position, that it would do nothing to stop Mr. Assange's indefinite detention despite the passage of time and its consequent impact upon Mr. Assange.

56. The source emphasized that in its response, the Swedish Government conceded that Mr. Assange's situation, caused by Sweden, was "very tough", yet failed to address a single legal authority cited by Mr. Assange demonstrating that he was deprived of liberty and that this 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 where an individual feels compelled to 'choose' to suffer indefinite confinement. The Government of Sweden had no reply to these authorities.

57. The source further underlined that in its response, the Swedish Government refused to consider the grounds for Mr. Assange's asylum under the 1951 Refugee Convention, customary international law or any other mechanism that was derivative of the *jus cogens* norm of *non-refoulement*. The Government of Sweden's reply was silent on the 1951 Refugee Convention Framework and failed to recognise that it had obligations in relation to the factual circumstances that gave rise to Mr. Assange's asylum. Sweden's failure to recognise humanitarian grounds for asylum contradicted state practice, including Sweden's own practice.

58. The source stated that the Government of Sweden sets out its political position in relation to Mr. Assange's asylum "the Government refutes the source's allegation that Sweden is obliged [...] to recognise the asylum granted". The reply did not devote a single word to the position set out in the Assange's submission concerning Sweden's duty to afford mutual recognition to asylum decisions issued by other States within the Framework of the 1951 Convention. The source asserted that Sweden's obligations arise, *inter alia*, under the 1951 Convention itself, to which it is a signatory; and Article 18 of the EU

Charter. An examination of the grounds for Ecuador's decision, including the *jus cogens* norm of *non-refoulement*, is also absent from Sweden's Reply.

59. According to the source, as affirmed by UNHCR, States do not grant refugee status to persons; their decisions are declaratory in the sense that they simply 'recognise' that there are well-founded grounds to consider that the person is a refugee. In this sense, the point is not merely whether Sweden is obliged to recognise Ecuador's asylum decisions, but whether Sweden can ignore the fact that there has been an elaborate evidential determination that Mr. Assange faces a risk of persecution and cruel, inhuman and degrading treatment.

60. UNHCR has further confirmed that "the principle of *non-refoulement* applies not only to recognised refugees, but also to those who have not had their status formally declared". Accordingly, the possibility that Sweden's position is not to recognise the 'diplomatic portion' of Ecuador's asylum decision does not exempt it from either (a) recognising Ecuador's asylum assessment of Mr. Assange as a 'refugee' under the 1951 Refugee Convention 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.

61. With regard to the narrow exclusion clause invoked by Sweden in its response, the source claimed that the Government misunderstood both the clause and the grounds for Mr. Assange's asylum. In particular, the statement of the Swedish Government 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 by Sweden's response, misconstrues the grounds for Mr. Assange's asylum.

62. The grounds for Mr. Assange's asylum have grown stronger over time. On 19 May this year [2015] the United States stated in its court submissions that the investigation against Mr. Assange is an "ongoing Department of Justice ("DOJ") and FBI criminal investigation and pending future prosecution" and that the United States Government has been "very clear that main, multi-subject, criminal investigation of the DOJ and FBI remains open and pending."

63. The source emphasized that notwithstanding that the United States continued to build its case against Mr. Assange while he was trapped in the Embassy and could at any moment file an extradition request of its own; formally, had Sweden not issued a European Arrest Warrant for Mr. Assange, he would not have presently faced arrest upon departure from the Ecuadorian Embassy, nor would have he been subjected to the current intrusive regime of surveillance and controls. Thus, his deprivation of liberty was governed by Sweden's maintenance of its extradition warrant and therefore falls under the authority of Sweden.

64. In connection to this the source affirmed that the EAW issued by Sweden is the current formal basis for Mr. Assange's detention, although United Kingdom police have been instructed to arrest Mr. Assange even if the Swedish EAW falls away. In this regard, 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 out of Sweden's issuance of the EAW.

65. The source also asserted that the response of the Government of Sweden failed to acknowledge Sweden's 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. Sweden's position was incongruous with the fact that Sweden had itself recognised that States have, under general international

law, a right and a duty in certain cases to provide diplomatic asylum on humanitarian grounds.

66. The source claimed that Sweden could not resile from 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.

67. According to the source, Sweden has long recognised 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 Swedish Embassy, but also in billeted abutting 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 Swedish Embassy, but also safe conduct to Sweden. Sweden also granted temporary diplomatic asylum to a US national in Tehran during the so-called Iran hostage crisis, as did Canada and the United Kingdom.

68. In its comments the source, stated 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 of America and the risk of political persecution and cruel, inhuman and degrading treatment.

69. With regard to the legality of the EAW, the source stressed that since the final decision by the Supreme Court of the United Kingdom in Mr. Assange's case, UK domestic law on the determinative issues had been drastically changed, including as a result of perceived abuses raised by Sweden's EAW, so that if requested, Mr. Assange's extradition would not have been permitted by the UK.¹ 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 Ecuadorian Embassy is likely to continue indefinitely. Neither Sweden nor the United Kingdom had seen it as their duty to proffer any other remedy than to allow the demand for extradition to continue unchanged.

70. The source further argued that the response of the Swedish Government asserted that Mr. Assange's confinement in the embassy was voluntary, and that "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 in time" and that there is "no causal link" between the Swedish EAW and Mr. Assange's confinement. However, even the Swedish Prosecution

¹ The changes to UK extradition legislation following Mr. Assange's case. In brief, the United Kingdom has now concluded:

(i) By virtue of a binding decision of the UK Supreme Court in 2013, that the UK 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, that the UK 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, that 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).

Authority as recently as July 2014 described Mr. Assange's case in relation to its warrant against him as remaining "in custody" and Mr. Assange's being "still detained".²

71. With regard to the right to independent, rigorous and fair process, the source stated that beside that Mr. Assange had not yet been formally charged, contrary to the general statement of Sweden's response claiming that in Sweden, "[d]uring 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 had been granted access to hundreds of potentially exculpatory SMS messages, thereby violating Mr. Assange's right to effective judicial protection.

72. On 19 November 2014, the source submitted its comments to the responses of the Government of the United Kingdom of Great Britain. The source considered that the reply of the Swedish Government could not 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 UK Crown Prosecution Service, was the party formally acting against Mr. Assange in the UK courts.

73. According to the source, in light of Sweden's concession that Mr. Assange's situation is "very tough", the Government of the United Kingdom of Great Britain 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 treatment.

74. The source asserted that the response of the UK Government revealed its position to do nothing to stop Mr. Assange's indefinite detention despite the passage of time and its consequent impact upon Mr. Assange and his family. In its response, 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 1951 Refugee Convention, or customary international law.

75. Firstly, the response did not devote a single word concerning the United Kingdom's duty to afford mutual recognition to asylum decisions issued by other States within the Framework of the 1951 Convention. Secondly, the United Kingdom further claimed that Mr. Assange was not granted 'political' asylum but was instead granted asylum under the Caracas Convention, and that because the United Kingdom was not a party to the Caracas Convention, it has no obligation to recognise it. Sweden, the United Kingdom and Ecuador are parties to the 1951 Refugee Convention, which places on States an obligation to respect *non-refoulement* with no reservations.

76. The United Kingdom failed to acknowledge custom and its own practice of recognising 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. Further, numerous countries, including the United Kingdom, had recognised diplomatic asylum in its 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. Lord McNair had summarised the UK practice in the following terms: "on humanitarian grounds [the UK]

²See: <<http://www.aklagare.se/In-English/Media/News-in-English1/Report-concerning-the-detention-of-JulianAssange/>>; <<http://www.aklagare.se/In-English/Media/News-in-English1/Julian-Assange-still-detained/>>; and <<http://www.aklagare.se/In-English/Media/News-in-English1/Julian-Assange-to-remain-in-custody/>>.

has frequently authorised its diplomatic and other officers to grant temporary asylum in cases of emergency”.

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

78. The corrective UK legislation addressed the court’s inability to conduct a proportionality assessment of the Swedish prosecutor’s international arrest warrant (corrected by s. 157 of the Anti-Social Behaviour, Crime and Policing Act 2014, in force since July this year). The corrective legislation also barred extradition where no decision to bring a person to trial had been made (s. 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.

79. The source asserted that the legal basis for Mr. Assange’s extradition has further eroded. The UK’s response even rested its assertion on a Supreme Court decision which even the Supreme Court has distanced itself from. In the *Bucnys* case, the Supreme Court revisited its split decision in *Assange vs. Swedish Prosecution Authority* and explained that the single argument which had become the decisive point in *Assange* had been reached incorrectly.

80. Nevertheless, the corrective legislation in domestic UK law excluded any individual whose case had been already decided by the UK courts. Thus Mr. Assange was frozen out of a remedy, further contributing to his legally uncertain and precarious situation, without a 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 which was favourable to the accused, in accordance with the jurisprudence of the ECtHR. 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 abused by it is not getting its benefit.

81. The source also claimed that, in its response, the UK Government failed to recognise that Mr. Assange’s chances of receiving an “independent, rigorous and fair process” had already been fatally and irreparably undermined. At a very minimum, the United Kingdom should have recognised that Mr. Assange had been denied a speedy investigation and the right to defend himself, and he had been kept under different forms of deprivation of liberty which amount to the arbitrary detention he was currently subjected to.

82. Additionally, Mr. Assange had been, from the beginning of the Swedish investigation, denied an “independent, rigorous and fair process”. The source alleged that the United Kingdom completely failed to respond to the arguments that there was a lack of fair process and prejudice faced by Mr. Assange due to the fact that the existence of a confidential preliminary investigation against Mr. Assange had been unlawfully disclosed to a tabloid newspaper (*Expressen*) by the Swedish Prosecution Authority within hours of its commencement, which led to a perception that there is a formal accusation against Mr. Assange.

83. Finally, the source claimed 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 recognise his right to asylum or to offer him safe passage. Mr. Assange faces ongoing indefinite detention and the serious compromise of his health and family life, which is a violation of numerous conventions to which the United Kingdom

is a party. The UK Government's response proposed no relief and only served to reinforce the indefinite and arbitrary nature of Mr. Assange's confinement.

Discussion

84. 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.

85. At the outset, the Working Group notes with concern that Mr. Assange has been subjected to different forms of deprivation of liberty ever since 7 December 2010 to this date as a result of both the actions and the inactions of the State of Sweden and the United Kingdom of Great Britain and Northern Ireland.

86. Firstly, Mr. Assange was held in isolation in the Wandsworth prison in London for 10 days, from 7 December to 16 December 2010 and this was not challenged by any 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 the episode that lasted longer than 5 years. The arbitrariness is inherent in this form of deprivation of liberty, if the individual is left outside the cloak of legal protection, including the access to legal assistance (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 both rules proscribing arbitrary detention and ensuring the right to a fair trial, as guaranteed by articles 9 and 10 of the UDHR and articles 7, 9(1), 9(3), 9(4), 10 and 14 of the ICCPR.

87. That initial deprivation of liberty then continued in the form of house arrest for some 550 days. This again was not contested by any of the two States. During this prolonged period of house arrest, Mr. Assange had been 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 prohibited the unfolding of judicial management of any kind in a reasonable manner from occurring for such extended period of time.

88. It is during that period that he has sought refuge at the Embassy of the Republic of Ecuador in London. Despite the fact that the Republic of Ecuador has granted him asylum in August 2012, his newly acquired status has not been recognized by neither Sweden nor the UK. Mr. Assange has been subjected to extensive surveillance by the British police during his stay at the Ecuadorian Embassy to this date.

89. 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 (ICCPR), Mr. Assange has not been guaranteed the international norms of due process and the guarantees to a fair trial during these three different moments: 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 the Republic of Ecuador in London, United Kingdom.

90. The Working Group also views that Mr. Assange's stay at the Embassy of the Republic of Ecuador in London to this date should be considered as a prolongation of the already continued deprivation of liberty that had been conducted in breach of the principles of reasonableness, necessity and proportionality.

91. The Working Group, in its Deliberation No. 9, had already confirmed its position on the definition of arbitrary detention. What matters in the expression 'arbitrary detention' is essentially the word "arbitrary", i.e., 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 facilities* where they remain under constant surveillance may not only amount to restrictions to personal freedom of movement, but also constitute a de facto deprivation of liberty (para. 59). The notion of “arbitrary” *stricto sensu* 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).

92. 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, as was reiterated in para. 61 of the Deliberation No. 9 of the Working Group).³

93. 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 this Opinion, Mr. Assange has never been formally indicted in Sweden. The European Arrest Warrant was issued for the purpose of conducting preliminary investigation in order to determine whether it will lead to an indictment or not.

94. In its reply, the Swedish Government 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 material of such which is in violation of article 14 of ICCPR.

95. At this point, it is noteworthy that the Working Group, while examining the essential safeguards for the prevention of torture, 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 (para. 58, the Deliberation No. 9). The right to personal security in article 9, paragraph 1 of the ICCPR, 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 ICCPR. Certain conditions of detention (such as access to counsel and family) may result in procedural violations of paragraphs 3 and 4 of article 9 (para. 59, the Deliberation 9).

96. With regard to the application of the principle of proportionality, it is also worth mentioning that Lord Reed of the UK Supreme Court (*Bank Mellat v Her Majesty's Treasury* [2013] UKSC 39, per Lord Reeds, para. 74) set out that it is necessary to determine (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected rights; (2) whether the measure is rationally connected to the objective; (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective; (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of

³ In this regard, see also Part I and Part II, section C of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), U.N. Doc., A/RES/70/175.

the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.⁴

97. The Working Group also views that there has been a substantial failure to exercise due diligence on the part of the concerned States with regard to the performance of the criminal administration, given the following factual elements: (1) in the case of Mr. Assange, after more than five years' of time lapse, he is still left even before the stage of preliminary investigation with no predictability as to whether and when a formal process of any judicial dealing would commence; (2) despite 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; (3) 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; (4) as a consequence, his situation now has become both excessive and unnecessary. From a time perspective, it is worse than if he had appeared in Sweden for questioning and possible legal proceeding when first summoned to do so; (5) irrespective of whether the grant of the asylum by the Republic of Ecuador to Mr. Assange should be acknowledged by the concerned States and whether the concerned States could have endorsed the decision and wish of the Republic of Ecuador, as they had previously done on the humanitarian grounds, the grant 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 as defining either merely hypothetical or irrelevant; (6) it defeats the purpose and efficiency of justice and the interest of the concerned victims to put this matter of investigation to a state of indefinite procrastination.

98. The Working Group is convinced once again that, among others, the current situation of Mr. Assange staying within the confines of the Embassy of the Republic of Ecuador in London, United Kingdom, 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 followings: (1) 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; (2) the duration of such 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 light of the length of this detention, i.e. his confinement in the Ecuadorian Embassy; (3) the indefinite nature of this 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 subjected; (4) the Embassy of the Republic of Ecuador in London is not and far less than a house or detention centre equipped for prolonged pre-trial detention and lacks appropriate and necessary medical equipment or facilities. It is valid to assume, after 5 years of deprivation of liberty, Mr. Assange's health could have been deteriorated to a level that anything more than a superficial illness would put his health at a serious risk and he was denied his access to a medical institution for a proper diagnosis, including taking a MRI test; (5) with regard to the legality of the EAW, since the final decision by the Supreme

⁴ For an application of the proportionality principle at the European Court of Human Rights, see the ECtHR (*James and Others v the United Kingdom*, Application No. 8793/79, [1986] ECHR 2 (21 February 1986), (1986) 8 EHRR 123).

Court of the United Kingdom in Mr. Assange's case, UK domestic law on the determinative issues had been drastically changed, including as a result of perceived abuses raised by Sweden's EAW, so that if requested, Mr. Assange's extradition would not have been permitted by the UK. 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 Ecuadorian Embassy is likely to continue indefinitely. The corrective UK legislation addressed the court's inability to conduct a proportionality assessment of the Swedish prosecutor's international arrest warrant (corrected by s. 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 (s. 156).

Disposition

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

The deprivation of liberty of Mr. Assange is arbitrary and in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 7, 9(1), 9(3), 9(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.

100. Consequent upon the opinion rendered, the Working Group requests the Government of Sweden and the Government of the United Kingdom of Great Britain and Northern Ireland 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.

101. 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]

Appendix I

Individual dissenting opinion of WGAD member Vladimir Tochilovsky

1. The adopted Opinion raises serious question as to the scope of the mandate of the Working Group.
 2. It is assumed in the Opinion that Mr. Assange has been detained in the Embassy of Ecuador in London by the authorities of the United Kingdom. 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 the bail in June 2012 and since then stays at 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 the State that does not recognise 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 2011-2012, it was previously emphasised 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, measure which would then lie *outside the Group’s competence*” (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 the 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 the fugitives’ self-confinement, such as asylum and extradition, do not fall into 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 the *appropriate* UN human rights treaty bodies and the European Court of Human Rights that do have mandate to examine such complaints regardless whether they involve deprivation of liberty or not.
 7. Incidentally, any further application of Mr. Assange may now be declared inadmissible in an appropriate UN body or ECtHR on the matters that have been considered by the Working Group. In this regard, one may refer to the ECtHR decision in *Peraldi v. France* (2096/05) and the reservation of Sweden to the First Optional Protocol to the ICCPR.
 8. For these reasons, I dissent.
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NEWS RELEASE



Julian Assange arbitrarily detained by Sweden and the UK, UN expert panel finds

GENEVA (5 February 2016) – WikiLeaks founder Julian Assange has been arbitrarily detained by Sweden and the United Kingdom since his arrest in London on 7 December 2010, as a result of the legal action against him by both Governments, the United Nations Working Group on Arbitrary Detention said today.

In a public statement, the expert panel called on the Swedish and British authorities to end Mr. Assange's deprivation of liberty, respect his physical integrity and freedom of movement, and afford him the right to compensation (Check the statement: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17012&LangID=E>)

Mr. Assange, detained first in prison then under house arrest, took refuge in Ecuador's London embassy in 2012 after losing his appeal to the UK's Supreme Court against extradition to Sweden, where a judicial investigation was initiated against him in connection with allegations of sexual misconduct. However, he was not formally charged.

"The Working Group on Arbitrary Detention considers that the various forms of deprivation of liberty to which Julian Assange has been subjected constitute a form of arbitrary detention," said Seong-Phil Hong, who currently heads the expert panel.

"The Working Group maintains that the arbitrary detention of Mr. Assange should be brought to an end, that his physical integrity and freedom of movement be respected, and that he should be entitled to an enforceable right to compensation," Mr. Hong added.

In its official Opinion, the Working Group considered that Mr. Assange had been subjected to different forms of deprivation of liberty: initial detention in Wandsworth Prison in London, followed by house arrest and then confinement at the Ecuadorean Embassy.

The experts also found that the detention was arbitrary because Mr. Assange was held in isolation at Wandsworth Prison, and because a lack of diligence by the Swedish Prosecutor's Office in its investigations resulted in his lengthy loss of liberty.

The Working Group established that this detention violates Articles 9 and 10 of the Universal Declaration on Human Rights, and Articles 7, 9(1), 9(3), 9(4), 10 and 14 of the International Covenant on Civil and Political Rights.

Check the Working Group's Opinion on Julian Assange's case (No.

54/2015), adopted in December:

<http://www.ohchr.org/Documents/Issues/Detention/A.HRC.WGAD.2015.docx>

NOTE TO EDITORS:

The Opinions of the Working Group on Arbitrary Detention are legally-binding to the extent that they are based on binding international human rights law, such as the International Covenant on Civil and Political Rights (ICCPR). The WGAD has a mandate to investigate allegations of individuals being deprived of their liberty in an arbitrary way or inconsistently with international human rights standards, and to recommend remedies such as release from detention and compensation, when appropriate.

The binding nature of its opinions derives from the collaboration by States in the procedure, the adversarial nature of its findings and also by the authority given to the WGAD by the UN Human Rights Council. The Opinions of the WGAD are also considered as authoritative by prominent international and regional judicial institutions, including the European Court of Human Rights.

ENDS

*Mr. **Seong-Phil Hong** (Republic of Korea) is the Chairman-Rapporteur of the Working Group on Arbitrary Detention. Other members of the Working Group are Ms. **Leigh Toomey** (Australia); Mr. **José Antonio Guevara Bermúdez** (Mexico); Mr. **Roland Adjovi Sètondji** (Benin) and Mr. **Vladimir Tochilovsky** (Ukraine). Learn more, log on*

to: <http://www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx>

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The Universal Declaration on Human Rights: <http://www.ohchr.org/EN/Library/Pages/UDHR.aspx>

The International Covenant on Civil and Political Rights:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> .

UN Human Rights, Country Pages:

Sweden: <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/SEIndex.aspx>

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s 22

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s 33(a)(iii) and s 33(b)

5. SPA press release dated 13 April:**Text begins:**

"Today, the prosecutors have presented a written comment to the Stockholm District Court concerning the detention of Julian Assange. Assange's lawyers have requested the Court to annul the detention order, which the prosecutors contest.

In a letter of response to the District Court, the prosecutors express the opinion that they contest that the Court should annul the detention order. Julian Assange is still, on probable cause, suspected for a serious crime and the risk of evasion stands. On 11 May 2015, the Supreme Court stated in the adjudication of the detention order that the public interest of continuing the investigation carry weight. The Supreme Court did not judge a continued detention to be contrary to the principle of proportionality.

– We continue our attempts to interview Julian Assange at Ecuador's embassy in London. In the beginning of 2016, the Prosecutor-General of Ecuador on formal grounds rejected a request concerning permission to conduct an interview. Therefore, a renewed request was submitted in March. We have not yet received a reply, says Director of Public Prosecution Marianne Ny. In total, the prosecutors judge that a continued detention complies with the principle of proportionality and that there, at the moment, is no reason to annul the detention order. Furthermore, the prosecutors write that they do not oppose an oral hearing, but do not find it necessary as the matter was tried by the Supreme Court as late as 2015 and as the parties thoroughly have expressed their positions in writing."

End of text.

text ends

Sent by:

s 22

Prepared by:

Approved by:

Topics:

s 33(a)(iii) and s 33(b)

s 22