

The Ruling of the UN Working Group on Arbitrary Detention on Julian Assange

There was an international arrest warrant issued against WikiLeaks founder Julian Assange on November 20, 2010. This was in connection with the charges of rape, sexual molestation, and unlawful coercion that he was alleged to have committed in Sweden. On December 8, 2010, Assange turned himself into the London, United Kingdom police, triggering a lengthy legal battle that took place in the English courts over the next eighteen months. The case seemingly drew to a conclusion in May 2012, when the U.K. Supreme Court determined that Sweden's "extradition request had been lawfully made." After a final bid to reopen his appeal was dismissed, U.K. officials were given ten days to take Assange to Sweden.

Instead of preferring an appeal with the European Court of Human Rights, Assange sought refuge at the Ecuadorian Embassy in London in June 2012. Citing his well-founded fears of political persecution and the possibility of the death penalty were he sent to the United States,¹ Ecuador formally granted diplomatic asylum to Assange on August 16, 2012. Though U.K. and Sweden are Parties to the UN Refugee Convention, both of them had criticized Ecuador's controversial decision and vowed to prevent Assange from receiving safe passage out of the country. Assange has been at the embassy for over three years, unable to leave, because of the threat of arrest under a warrant issued by Sweden.

In September 2014, Assange filed a complaint against Sweden and Britain with the United Nations Working Group on Arbitrary Detention (WGAD)² asserting that the threat of arrest resulted in him being "deprived of his liberty in an arbitrary manner for an unacceptable length of time." Both Britain and Sweden participated in the 16-month long UN investigation and submitted evidence and defended their position before the tribunal. The WGAD came out with a

¹ Article 1(A) (2) of the U.N. Convention Relating to the Status of Refugees defines "refugee" as any person that "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country." United Nations Convention Relating to the Status of Refugees, Art. 1(A) (2), July 28, 1951, 189 U.N.T.S. 150. Assange fears that if he were to be sent to USA, he might be prosecuted and perhaps be executed by a military court in regard to his involvement in the release of stolen and leaked American documents on its crimes in Afghanistan and Iraq.

² The WGAD is one of the thematic special procedures overseen by the United Nations Human Rights Council. It focuses on arbitrary detention, including instances in which States imprison or otherwise detain individuals in a manner not allowed by law or without respecting due process guarantees. It is empowered to monitor States' adherence to their international responsibilities against arbitrary detention through investigation of cases of deprivation of liberty, to seek and receive information from governments, inter-governmental organizations, and non-governmental organizations, to send urgent appeals and communications to governments based on allegations of arbitrary detention submitted to it, to conduct field missions, to formulate general recommendations, and to present an annual report to the Human Rights Council.

ruling (by a 3:1 majority³) in February 2016. Essentially, the WGAD had to grapple with two main issues:

First, does the deprivation of liberty of Assange qualify as ‘arbitrary detention’, given that he voluntarily took refuge at the embassy and was granted diplomatic asylum by Ecuador?

Second, is the indefinite and continued deprivation of his liberty in violation of human rights norms relating to the guarantee of a right to fair and speedy trial, and freedom of movement?

In response to the first question, the WGAD clearly accepted the argument that Assange’s conditions are not volitional, or self-imposed, but (the detention was) arbitrary. There is indeed a strong case to suggest so: the Swedish prosecution had clearly stated in 2014 that Assange is ‘in detention’, and has not withdrawn the arrest warrant against him; the British police have maintained that they will arrest Assange even if the arrest warrant against him is withdrawn, as he violated the ‘house arrest’ rules when he fled to the Ecuadorian embassy to seek asylum – although the original Swedish warrant was the very reason for the house arrest in the first place; and that Assange is also continuously subjected to surveillance by the British government.

On the second issue, the WGAD considered that Assange’s detention was in violation of Articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and Articles 7, 9(1), 9(3), 9(4), 10 and 14 of the International Covenant on Civil and Political Rights (ICCPR). Article 9 of the UDHR provides that ‘No one shall be subjected to arbitrary arrest, detention or exile’, while Article 10 sets out the right to a fair trial before an independent and impartial tribunal. Article 7 of the ICCPR prohibits torture and cruel, inhuman or degrading treatment or punishment. Article 9 ICCPR covers the right to a fair trial.

Whether there is a right of diplomatic asylum recognized by international law was also a question dealt with by the UN panel (though this was not legally central to its ruling). It was argued by both Sweden and UK that diplomatic asylum is an institution not universally recognized in international law, and that they are not obliged to accept a regional practice emanating from Latin America. The WGAD criticized the Swedish and UK Governments for failing to recognize the asylum granted to him by Ecuador (though provided no reasons why they should have).

The WGAD concluded that Assange’s detention, house arrest, and subsequent seclusion in Ecuador’s embassy constituted arbitrary detention which the governments of Sweden and the

³ The WGAD is made up of five experts: Ms. Leigh Toomey of Australia; Mr. José Antonio Guevara of Mexico; Mr. Roland Adjovi Sètonджи of Benin; Mr. Vladimir Tochilovsky of Ukraine; and the Chairman-Rapporteur of WGAD, Mr. Seong-Phil Hong of the Republic of Korea. Four of the WGAD’s five members participated in the decision. Ms. Leigh Toomey recused herself from taking part in the opinion because she, like Mr. Assange, is an Australian citizen.

United Kingdom should redress. The WGAD 's decisions are, however, non-binding, and rely on cooperation from governments, which often disagree with findings. The intention of the U.K. and Sweden not to comply with this ruling has been made clear, despite the fact that both of them are State Parties to the ICCPR.