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JULIAN ASSANGE STORY FROM A HUMAN RIGHTS PERSPECTIVE

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Resumen

La historia de Julian Assange es muy sonada en nuestros días debido al desenfreno político causado por el material divulgado por Wikileaks en 2010, involucrando a Estados Unidos.

Con Assange como protagonista de nuestro trabajo, contamos su historia a la luz del derecho internacional público estudiando atentamente la extradición, el asilo diplomático, y centrándonos especialmente en las violaciones de derechos humanos que se han producido y se están produciendo, dado que la situación sigue latente.

Iniciamos el trabajo con una introducción, seguida de un resumen de los hechos importantes para entender el caso, una breve explicación de la acusación emitida y los delitos que se le imputan, para posteriormente analizar su extradición a Estados Unidos y el periodo de asilo en la Embajada de Ecuador y finalmente centrarnos en las violaciones de sus derechos humanos. Por último, pasamos a las conclusiones donde damos nuestra opinión personal sobre el caso.

PALABRAS CLAVE: asilo diplomático, extradición, libertad de expresión, derechos humanos

Abstract

The story of Julian Assange is much publicized in our times because of the political slander caused by the material released by Wikileaks in 2010, involving the United States.

With Assange as the main character in our paper, we overview his story in the light of public international law by attentively studying extradition, diplomatic asylum, and specially focusing on the study of the human rights violations that have occurred and are occurring, given that the situation remains latent.

We begin the paper with an introduction, followed by a summary of facts to understand the case, a brief explanation of the indictments issued and the crimes he is accused of, to later analyze his extradition to the United States and the asylum period at the Ecuadorean Embassy and ultimately focus on the human rights violations. Finally, we move on to our conclusions where we give our personal opinion on the case.

KEY WORDS: diplomatic asylum, extradition, freedom of expression, human rights

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1. INTRODUCTION

The story of Julian Assange is a hot topic nowadays because of the number of actors involved, the United States, the United Kingdom, Sweden and Ecuador, and because of the consequences it could have for freedom of the press.

The atrocities committed by states confront us daily: the Bosnian War, the Cambodian Genocide, the Russia-Ukraine War…Yet no matter if these crimes are recognized by international law, governments seem to be making the greatest efforts to put a shroud of secrecy over them. Instead of monitoring and measuring these crimes to expose and sanction the parties that commit them, consequences seem to be falling over the ones that blow the whistle.

Julian Assange is the man who in 2010 blew the whistle on alleged war crimes committed by US troops during the wars of Iraq and Afghanistan, by providing some of the largest newspapers with secret embassy cables. The material included videos showing US military's wrongdoings, such as firing on and killing journalists and several Iraqi civilians in 2007. According to the New York Times, the publication of these documents was the only way American citizens could understand the diplomacy that surrounded the two wars going on at the moment of the events, Iraq and Afghanistan, where American military was growing.

But far from recognizing Assange's contribution to bringing to light controversial but truthful acts of the United States in an attempt to resist state crime impunity, he is the one that is being treated like a criminal. At the time this paper is being written, January 2023, Mr. Assange has been isolated for over ten years and is now in the middle of a crucial moment in his extradition to the USA, where he faces charges up to 175 years behind bars.

Our aim with this paper is to tell Julian Assange's story in the light of public international law, especially focusing on the study of the violations of his human rights, among which are the following: the prohibition of arbitrary arrest, the right to due process, the prohibition of psychological torture and the right to freedom of expression. For this purpose, we will specifically look at the Universal Declaration of Human Rights.

The paper is organized as follows: the second section is a summary of the most essential facts of the case, the next one concerns a brief explanation of the Espionage Act

and the indictments, in the fourth section we analyze his extradition to the United States, in the fifth one his asylum at the Ecuadorean Embassy and we finally move on to focus on the human rights violations and end the paper with some conclusions.

2. THE JULIAN ASSANGE CASE

2.1. Summary of facts

Julian Assange is an Australian journalist that is known for being the founder of Wikileaks. Wikileaks is a website that releases secret government documents, new leaks, and privileged information collected from anonymous sources. More specifically, they revealed United States' diplomatic documents and videos of the US' troops fire at Iraqi civilians and journalists in 2010 and shared the cables with several publications.

These actions have made Assange sought after by the international police. As a result, the journalist has been living nomadically for the past few years, seeking refuge from one place to another. Even though the Australian government should have provided him with protection under the "protection of the national abroad" principle, the country has not done so optimally.

In 2010 Assange was living in Sweden, where he was accused of rape and sexual abuse. Then he left and moved to London, and while he was there, Swedish prosecutors issued an international arrest warrant for him to be extradited to Sweden. He denied the allegations, claiming there were political motives behind it. The main concern at that moment was that if he was extradited to Sweden, this could result in the Swedish government eventually handing him to the United States, facing charges for the documents released in 2010. Sweden eventually dropped the investigations in November 2019 because there was not enough evidence to support the initial claims, and some of the allegations had become time barred.

In 2012, the Ecuadorian government granted Assange diplomatic asylum, on the grounds that his human rights might be violated if he was extradited to Sweden and then eventually handed over to the United States. Since then, he became a refugee in the Ecuadorean Embassy in London.

In 2016, when the US elections were being held, WikiLeaks published Democratic Party emails, after they were stolen by Russian hackers. It is believed that this interference

played a big role in Hillary Clinton's loss against Donald Trump, as they showed how Clinton was favored over her rival Bernie Sanders in the primaries by the Democratic's Party National Committee.

In March 2018, Assange was formally accused by a federal jury indictment, alleging that he had conspired to commit computer intrusion, for trying to hash a password that would allow Chelsea Manning, an intelligence analyst in the United States Army, to download classified databases.

The diplomatic asylum lasted until 2019, when Ecuador withdrew its protection to Assange by virtue of repeated violations of international law. They claimed that not only had he failed to appear in court, but he had also violated international conventions during his time in the embassy. In April 2019, Assange was arrested from the Ecuadorean Embassy by British police officers, and later convicted of an offence under the Bail Act 1976. Since then, he has been in the Belmarsh prison in London, to comply with his 50-week imprisonment conviction, and after that for preventive purposes for the extradition trial to the US.

In June 2020, a new indictment was filed against him, with 17 new counts on the Espionage Act of 1917, making up a potential jail term of 175 years.

Two years later, in June 2022, extradition to the US was granted by the UK. This decision has been the most important stage so far in Mr. Assange's long legal battle.

Julian submitted an appeal to Britain's High Court in August 2022, for which the first hearing is supposed to happen at the beginning of 2023. Moreover, Julian has submitted a case against the United Kingdom at the European Court of Human Rights, as confirmed by the Court in the beginning of December, 2022.

2.2. Is Julian Assange a journalist?

Does being classified as a journalist have any implications in terms of his legal protection? Is Julian Assange a journalist or just a publisher or whistleblower?

Journalism is "the activity of gathering, assessing, creating, and presenting news and information" (American Press Institute, 2017). According to this definition, Mr. Assange is without a doubt a journalist. Some people are skeptical about calling him so

because they believe he stole information, and therefore to them, he is at most a mere publisher.

Without going any further, the head of the Justice Department's National Security Division, John Demers, declared that even though "the department takes seriously the role of journalists in our democracy, and they thank them for it, Julian Assange is no journalist". He added that "No responsible actor, journalist or otherwise, would purposely publish the names of individuals he or she knew to be confidential sources, exposing them to the gravest of dangers" (Zhao, 2019).

But whether Assange can be considered a journalist or not, the publication of classified information is something journalists do on a daily basis. This implies that by acting in the same way Assange did, either any other journalist could be prosecuted with similar consequences, posing a threat to all journalists, or that he is being persecuted for political reasons. Saying he is not a journalist as line of reasoning to justify his persecution has no legal basis (Tucker, 2019).

In fact, being a journalist or not has no implications in terms of his protection under the First Amendment of the US Constitution, that states the following:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the *freedom of speech*, or *of the press*, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Since the First Amendment protects everyone, it does not matter if Julian is or not a journalist (Neier, 2019).

If truth be told, I consider that going forward with the case poses a threat to anyone that gathers and publishes information, whether that person meets or not the US Justice Department's requirements to be considered a journalist. I believe this because even if deep down he is being persecuted for political reasons, the case is going to be solved in a way that does not look like it, meaning that his acts are going to be criminalized in an *at least apparent* objective way, creating a dangerous precedent for the future. When this case becomes precedent, there will be no going back and judges will be obliged to follow a similar approach in similar cases, therefore harshly limiting investigative journalism.

2.3. Who are Edward Snowden and Chelsea Manning and how are they connected to Assange?

It is pertinent to briefly introduce Edward Snowden and Chelsea Manning for the purpose of following the case correctly when we mention them in posterior sections of the paper.

Edward Snowden is a former US Intelligence Contractor. He leaked secret files in 2013 related to US from the National Security Agency when he was an employee and has been living in Russia since then. The information was related to surveillance programs. In September 2022, he got the Russian citizenship. He started becoming known when news regarding the material he published appeared in newspapers such as "The Guardian". It is alleged that Julian Assange and WikiLeaks assisted him to evade arrest.

Chelsea Manning is a US Army Intelligence Analyst. She provided Wikileaks with thousands of documents related to state secrets, more specifically concerning the US Defense Department. At this time, she had signed a classified information non-disclosure agreement. She served a tough sentence but was released from prison early thanks to Obama commuting her sentence. It is said that Assange had a role in unlawfully obtaining these materials from Manning, and the count laying on him regarding conspiracy to commit computer intrusion is related to the theft of this information.

3. ASSANGE'S CRIMINAL CHARGES. PARTIES' CLAIMS

This section is divided in two subsections, with the first one concerning a brief explanation of the substantial law used to accuse Assange, and the second one covering the charges of which he has been accused of.

3.1. Espionage Act of 1917

The Espionage Act of 1917 is a federal law that was passed during World War I to protect America's national defense through a better enforcement of the already existing criminal laws and primarily based on the punishment of espionage. It has accurately been defined as "a draconian piece of First World War legislation that gave the government powers to jail critics" (Cook, 2021).

Even though the law's purpose was to protect the rights of American citizens in the name of wartime security, it has been criticized on several occasions for being too vague and conflicting with the fundamental First Amendment rights.

The Espionage Act is relevant to our case because the Justice Department indicted Assange on 17 counts of violating the law, including a spying charge. The context in which the Espionage Act was passed gives rise to a debate as to whether a law that was promulgated as the country was entering a war, and that emphasized on the publication of detrimental information for the nation in an armed conflict is applicable to punish Assange (Neier, 2019). In fact, The Obama administration considered charging him under the Espionage Act but concluded not to out of worry that it would have a negative repercussion on investigative journalism and could violate the Constitution (Lee, 2020).

As a matter of fact, the Espionage Act has never been used before to prosecute publishers. The times when it has been used it was to go against government employees that stole information and handed it to journalists (Tillman, 2019). More specifically, the government has only twice brought Espionage Act charges against non-government third parties: in the prosecution of two employees for conspiring with Pentagon analyst Larry Franklin and in the prosecution of Anthony Russo, again for a matter related with Pentagon papers (Rottman, 2019).

As far as I am concerned, it was a misguided decision to indict Assange on Espionage Act counts, for multiple reasons.

Firstly, espionage is considered a political crime, and in principle, it gives Assange's defense a strong argument to fight extradition.

Moreover, the Espionage Act was used to prosecute criminals in what is considered as one of the rock bottom moments in American history concerning freedom of the press, during a period of censorship and repression, so using it nowadays is definitely a threat for journalists or publishers (Neier, 2019). In line with this, we should highlight that journalistic freedom in the United States has dramatically decreased throughout the years, going from position 17 in 2002 to position 42 in 2022 in the World Press Freedom Index rank (Reporters Without Borders, 2022). The decrease on journalistic freedom can be explained by the measures taken to carry out the war on terrorism, which have definitely had an effect on it: "*Reporters Without Borders contends that this drastic decline of press*

freedom in the United States occurred because the Bush administration "use[s] the pretext of 'national security' to regard as suspicious any journalist who question[s] the 'war on terrorism.'"" (Epstein, 2022).

Lastly, the timing of the superseding indictment leads to the belief that the government might not be able to prove the "conspiracy to commit computer intrusion" crime, hence they are charging him with other crimes contained in the Espionage Act (Gerstein, 2019). This suggests that the United States wants to charge him no matter what. My beliefs that prosecuting Assange with the Espionage Act was a misguided decision are enhanced by the fact that Obama had carefully contemplated using the Espionage Act but decided not to.

In summary, I am of the opinion that whether Julian Assange committed or not a crime and as long as that can be proved, he should have been accused on the grounds of a different law. Simply because the laws that are passed during critical times of war or other exceptional conditions should be used within those extraordinary circumstances. Would it be adequate to prosecute someone today on grounds of laws passed during the Spanish Civil War? I would not think so.

3.2. United States of America v. Julian Paul Assange. The Indictment.

Although Assange's story has been controversial for several years, the United States did not formally accuse him until 2018. Before that, even though he was confined in the Ecuadorian Embassy out of fear of the terrible consequences he could face, the US had no case against him, at best claims. It is worth noting that the change in government might have had something to do with the decision to indict him, as the Obama administration was quite hesitant to do so, but when Donald Trump came into power things drastically changed for Assange.

On 6 March 2018, the first sealed indictment was issued by a federal jury from Virginia. He was accused of "conspiracy to commit computer intrusion", under Title 18 of the US Code, section 371, for trying to break a password that would give Chelsea Manning access to privileged government information using a different username from the military base where she was stationed. The charge carried a maximum sentence of five years, with a possibility for parole.

On 24 June 2020, a new indictment, again by a federal jury from Virginia, was filed against him, containing 18 different counts: the one from 2018 and 17 new ones, related to the Espionage Act of 1917. This made a total of 18 federal charges. The indictment alleged that Assange aimed to recruit hackers and system administrators across the world and conspired with members of Anonymous and LulzSec. The indictment also described Assange's alleged efforts to recruit system administrators, as well as Assange and WikiLeaks' role in helping Snowden flee the US. In summary, the indictment accuses him of a "Conspiracy to Obtain and Disclose National Defense Information", "Conspiracy to commit computer intrusions", "Obtaining National Defense Information" and "Disclosing National Defense Information". These crimes could result in a jail term of 175 years, as he faces a maximum penalty of 10 years in prison on each count except for conspiracy to commit computer intrusion, for which he faces a maximum penalty of five years. As it was mentioned earlier, the issuance of this second superseding indictment raises suspicions that the US government might not be able to prove the "conspiracy to commit computer intrusion" that he was accused of in the first indictment, hence they are trying to charge him with any other crime contained in the Espionage Act.

The reactions to the second superseding indictment were very disparate. Whilst it was the right call for some, a number of scholars and jurists expressed their concerns regarding two matters: Assange's exposure to human right violations, and whether this would set a precedent for pursuing journalists and whistleblowers, resulting in a decrease in press freedom.

4. EXTRADITION TO THE UNITED STATES

4.1. Extradition theory. The four principles of extradition

Understanding extradition is key to understand Julian Assange's case, since the outcome of the never-ending legal battle directly depends on its concession.

What exactly is extradition? *"Extradition is the surrender by one nation to another of an individual accused or convicted of an offence outside of its own territory and within*

the territorial jurisdiction of the other which, being competent to try and punish him demands the surrender"[1] (Garg, 2022).

Extradition rests on the idea that it is much more efficient, especially in terms of evidence, to try or punish a criminal in the place where the crime took place.

It is worth noting that extradition law does not oblige courts to analyze whether it is right to transfer a person to stand trial in another country. Extradition will take place as long as certain criteria are met, and countries should only refuse a request when a bar to extradition comes into place. to consider whether it is just or right to transfer a person to stand trial in another country (Arnell, 2022).

Julian Assange has been subject to two extradition situations: the first one where the territorial state was Ecuador, and the requesting state was Sweden; and the second and current one, which we will focus on in the present paper, is the one where the territorial state is United Kingdom, and the requesting state is United States.

The main issue with extradition is that it is closely linked with a state's sovereignty, and no state is under the legal obligation to accept an extradition request. This does not mean that the extradition process is not a widely accepted international procedure, but it does stand to reason that there are some potential problems to be faced.

Because of the lack of a uniform legislation regarding extradition, countries rely on bilateral treaties to protect their mutual interests and maintain law and order. The goal through these treaties is to achieve a balance between state sovereignty and administration of justice.

Mutual cooperation between nations plays a big role in the success of extradition. The process does get difficult at times in the view of the fact that there are usually political interests involved. Sometimes what seems like an individual's extradition case is truly an ongoing old power fight between states. The result of this nonuniform system is that the extradition process is more orderly between states which have closer political ties.

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[1] Terlinden v. Ames, 184 U.S. 270 (1902)

As a means to smooth out the extradition process, states should make their decisions considering four principles: reciprocity, double criminality, double jeopardy and specialty.

The first principle is reciprocity, which makes sense in the context of international law, by virtue of the lack of an international body with compulsory jurisdiction to enforce arrangements. In the framework of extradition, the territorial state accepts an extradition request in exchange of some kind of diplomatic kindness, such as a relaxation of tariffs (Garg, 2022).

The second principle is double criminality, which requires, for an act to be extraditable, that it is a crime both in the territorial and the requesting state by a minimum custodial sentence of one year. In this case, the crimes of which Julian Assange is accused of should be so both in the United Kingdom and the United States for them to be extradited. This requisite can be removed under the European Arrest Warrant Framework, a Convention created to abolish extradition and establish a system of surrender between judicial authorities among the European Union, but not between third states (Garg, 2022).

The third principle is called "non-bis in-idem" or double jeopardy. Non-bis in-idem refers to the effect that the same crime cannot be tried and punished twice. In the context of extradition, a person who has been tried and punished cannot be extradited if the process is about that same crime. So, if Assange had been tried and punished for the crimes he has been accused of in the United Kingdom, extradition could not go on (Garg, 2022).

The last principle is the principle of specialty. This principle prohibits the requesting country from trying the party for any crime other than the one he was extradited for. In this case, by the principle of specialty, the United States could not try or punish Assange for any other crimes than the ones he has been accused of in his indictment (Garg, 2022).

4.2. UK-US Extradition treaty of 2003

As previously mentioned in the paper, the lack of a uniform legislation on extradition gives rise to bilateral treaties between countries.

In the case of Julian Assange's extradition, the involved parties are the United Kingdom, the territorial state, and the United States of America, the requesting state. The specific treaty that regulates the relationship between the two countries in extradition matters is the "Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America.", signed on 31st March 2003, and came into force in April 2007.

The Treaty was incorporated into domestic British Law by the Extradition Act 2003, which is an Act of the United Kingdom that regulates extradition requests by and to the United Kingdom. The Extradition Act 2003 is quite relevant because it transposed the European Arrest Warrant Framework to British Law, defined by the European Commission as a *"simplified cross-border judicial surrender procedure, for the purpose of prosecution or executing a custodial sentence or detention order."*

The treaty has been claimed to be one-way and lack reciprocity, in the sense that it is more beneficial to the US than to the UK. Prior to its ratification, both countries were required to present evidence to the standard of a "reasonable" demonstration of guilt. But with the treaty, these requisites were relaxed for United States requests to United Kingdom, but not the other way around. In fact, article 8.3.c) of the treaty says: *"for requests to the United States, such information as would provide a reasonable basis to believe that the person sought committed the offense for which extradition is requested."* So, while the United States is no longer required to present evidence *"sufficient according to the law of the requested party"*, as the prior treaty required, United Kingdom must still provide *prima facie* evidence. Because the treaty was negotiated on account of the 9/11 atrocities to facilitate the extradition of terrorist suspects, this resulted in an unfair process where the British cannot take such shortcuts at American courts (Binyon, 2006).

Leaving the previous matter aside, it should be noted that after signing the treaty, the United States and the United Kingdom have a mutual obligation to accept extradition requests coming from the other country. There are some exceptions to this obligation lined out in the following provisions of the treaty that we will mostly look at in the 4.4 Section: "Grounds of objection to Assange's extradition".

4.3. Assange extradition process (chronological)

Since February 2020 there have been several hearings in the trial concerning Assange's extradition to the United States.

On 20 July 2020 a request for extradition based upon the second superseding indictment was issued. The request was certified by the Secretary of State as valid on 29 July 2020.

We are not going to go over the hearings in this paper, as we will focus on the two crucial judgments that should be kept in mind to understand the case.

The first judgment was issued by Westminster Magistrates' Court on 5 January 2021. It is important because the extradition to the United States was denied at that time. The District Judge Vanessa Baraitser "initially knocked down arguments by his lawyers one after another and accepted the US authorities' assertion that his alleged activities fell outside of the realm of journalism" (Quinn, 2021) but ended up discharging extradition upon evidence by medical experts that extradition would end up in Assange taking his own life. More specifically, the basis of the discharge was oppression for reasons of mental health under Section 91 of Extradition Act 2003. In summary, Judge Vanessa Baraitser denied his extradition based on pure humanitarian reasons, and she knocked down all the other arguments alleged by Assange's lawyers.

As it was expected, the USA appealed against the discharging order, and in December 2021, they obtained their desired outcome: the High Court of Justice ruled that Assange may be extradited to the US, quashing the order by Vanessa Baraitser discharging Assange in January 2021. Subsequently, the case is sent to the Secretary of State, since this is what would have been done in the first place if the District Judge had decided differently on the matter regarding whether Mr. Assange's mental condition was such that it would be oppressive to extradite him.

On 20 April 2022, a British judge formally issued Assange's extradition order, and on 18 June 2022, the decision to extradite him was approved by the UK Home Secretary Priti Patel.

In August 2022, Julian submitted an appeal to Britain's High Court regarding the extradition order, for which we expect the first hearing to happen at the beginning of

2023. Furthermore, in the beginning of December 2022 Julian filed a case at the European Court of Human Rights against the United Kingdom, something Stella Assange hoped did not have to happen, as she hoped it would be solved in the UK "If the case was taken to the ECHR, she said it 'would be a sad day and a major disappointment'" (Holden, 2022).

4.4. Grounds of objection to Assange's extradition (political offenses, political motives, risk of suicide, receiving a fair trial, death penalty)

At the heart of the battle, Assange's legal team has thoroughly examined the US-UK Extradition treaty and brought to light various provisions that could constitute barriers to his extradition. This constitutes the core of the fight, as we have seen that an extradition request between the United States and the United Kingdom cannot be refused without a valid reason contained in an article of the treaty.

Amongst the most relevant grounds of objection is article number 4 of the UK-US Extradition treaty of 2003, which states the following:

"1. Extradition shall not be granted if the offense for which extradition is requested is a political offense."

"3. Notwithstanding the terms of paragraph 2 of this Article, extradition shall not be granted if the competent authority of the Requested State determines that the request was politically motivated. In the United States, the executive branch is the competent authority for the purposes of this Article."

Within the same article, we encounter two factors that would bar United Kingdom's handover to the United States, the first one being that the charges he is accused of amount to political offenses, and the second one that these charges are politically motivated.

Regarding the first one, whether the US is seeking him for a political offence is an exception that provides that those who carry out political crimes in the context of a political conflict should not be returned to their home countries to face prosecution.

Even though there is not a clear definition of the term "political offence", it is well-known to protect crimes such as espionage or treason (García-Mora, 1962). Assange lawyers alleged this exception, on the grounds that "as espionage is by definition a crime

directed against the political order of the state, it is an example of a purely political offence".

The issue with this allegation, which is what United States answered back, is that the Extradition Act 2003, which is United Kingdom domestic law, abolished the protection for political offences by removing the exception, and a treaty cannot alter internal law unless it is incorporated by statute. The English Courts have said very clearly that a treaty does not alter Parliament Acts, in this case the Extradition Act 2003: "A treaty to which Her Majesty's government is a party does not alter the laws of the United Kingdom. Except to the extent that a treaty becomes incorporated into the laws of the United Kingdom by statute; the courts of the United Kingdom have no power to enforce treaty rights and obligations at the request of a sovereign government or at the request of a private individual" (Lord Templeman, 1990).

Moreover, the United States also argued that WikiLeaks had published classified materials from several states and not a single one, so a political exception would not apply in any case.

In conclusion, because the Extradition Act 2003 deliberately removed the political offences provision, Assange lawyers cannot argue this ban any further, as it will not be considered unless an intervention of the British Parliament in the form of a statute occurs.

The second exception refers to politically motivated requests. Unlike with the previous exception, the Extradition Act 2003 maintained this one in its Section 81, that provides that a person's extradition is barred if "it appears that the request for extradition is issued for the purpose of prosecuting or punishing him on account of his political opinions". Assange's legal team alleged this exception on the grounds that the Trump administration suddenly reversing the decision made by the Obama administration not to prosecute Assange, followed by the controversial nature of the allegations and the US' behavior during his time in the Ecuadorean Embassy (monitoring his actions) show this prosecution is politically motivated. The Westminster Magistrates' Court concluded that the charges were not brought in bad faith, so the bar was not accepted by the Court.

Section 91 of the Extradition Act 2003 constitutes another bar to extradition. It says that whenever a person's health is such that it would be oppressive to extradite him, a judge must order his discharge or adjourn the extradition hearing. Assange's mental

health was assessed by professionals to determine whether a possible extradition could increase his risk of suicide and whether this was a substantial risk. The Westminster Magistrates' Court accepted that Assange suffered from an autism spectrum disorder and decided in its judgment in January 2021 that there was in fact a substantial risk that he could commit suicide if extradition to the US was granted. As a consequence, Assange was discharged, but only on humanitarian grounds. Two issues that had a role in making the judge conclude that there was an actual risk to his health were the likeliness that Mr. Assange would suffer restrictive special administrative measures and the fact that he could be held at the Administrative Maximum Security prison in Florence.

After this decision, the US provided the UK with a package of assurances, more specifically referring to Assange not being subject to SAMs or imprisoned at ADX.

Another bar to extradition is the one contained in Section 87 of the Extradition Act 2003, that states that the judge has to decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998. More specifically, Assange's legal team alleged that if extradited he would be receiving an inhuman and degrading treatment, that his right to a fair trial would be denied, it would involve a novel and unforeseeable extension of the law, and his right to freedom of expression would be violated. Because the Westminster Magistrates' Court concluded that Section 91 constituted a bar to extradition, she did not analyze any further We will analyze the matters concerning this bar in depth in Section 7: "Human Rights Violations in Assange's extradition to the United States".

5. ASYLUM IN THE ECUADOREAN EMBASSY

Assange was formally granted asylum by Ecuador in August 2012, after an almost two year-long battle respecting his extradition to Sweden. He sought asylum in the wake of the United Kingdom Supreme declaring that Sweden's "extradition request had been 'lawfully made.'" After being given ten days to be handed to Sweden, he looked for refuge through the instrument of diplomatic asylum.

5.1. What is diplomatic asylum?

In international law there are two well-known types of asylum: territorial and diplomatic.

Territorial asylum refers to States giving sanctuary to individuals present in their territory to protect them from being prosecuted in another State. The International Court of Justice has determined that territorial asylum is within the scope of exercise of a State's territorial sovereignty, which gives a State an exclusive right to exercise jurisdiction over individuals present in their own territory.

Diplomatic asylum is a practice consisting of individuals obtaining refuge in a State's diplomatic mission, within the territory of another State. General international law does not recognize a right to diplomatic asylum, as the ICJ ruled in the Asylum case: "*diplomatic asylum as a serious derogation from territorial sovereignty cannot be recognized unless its legal basis is established in each particular case*" (Värk, 2012). The institution has been controversial for centuries because while some States, mainly Latin American, recognize it, others, mainly European, don't. The biggest issue is that the former recognizes the institution as a way to protect the lives of people who are persecuted for their political views, while the latter believes it is a violation of the territorial State's sovereignty (Värk, 2012). As a result, there are hostilities between the territorial and host state and clashes of sovereignties.

5.2. Legal body supporting Ecuador's decision

In the present case the involved countries are Ecuador, the protecting state, and UK, the territorial State.

Ecuador itself recognizes diplomatic asylum, as can be derived from the Caracas Convention on Diplomatic Asylum, that Ecuador ratified in 1955, from its first article I: *"Asylum granted in legations, war vessels, and military camps or aircraft, to persons being sought for political reasons or for political offenses shall be respected by the territorial State in accordance with the provisions of this Convention."*.

In contrast, United Kingdom does not, as was affirmed by Foreign Secretary William Hague after the news about Ecuador granting him asylum was out: "*We will not allow Mr Assange safe passage out of the UK, nor is there any legal basis for us to do so. The UK does not accept the principle of diplomatic asylum. It is far from a universally accepted concept: the United Kingdom is not a party to any legal instruments which require us to recognise the grant of diplomatic asylum by a foreign embassy in this country. Moreover, it is well established that, even for those countries which do recognise*

diplomatic asylum, it should not be used for the purposes of escaping the regular processes of the courts. And in this case that is clearly what is happening" (Foreign & Commonwealth Office, 2012).

Within this framework, we have a country that accepts diplomatic asylum and a country that does not, and reality is that Mr. Assange lived in the Ecuadorean Embassy for seven years, until British police stormed it. How is this possible if the institution is not accepted by both countries involved? Did the United Kingdom have to respect the Ecuadorean Embassy from a legal point of view?

To answer these questions, we should refer to the main legal bodies that Ecuador used to support its decision. These are the 1948 Universal Declaration of Human Rights ("UDHR"), the Organization of American States ("OAS"), the OAS Convention on Diplomatic Asylum and the Vienna Convention on Diplomatic Relations (Lavander, 2014).

The Vienna Convention on Diplomatic Relations is especially relevant in this case. It is a multilateral treaty that makes up the core of diplomatic relations between independent countries to facilitate a smooth relationship between governments. It is important because even though United Kingdom did not recognize diplomatic asylum, it is a party to the Vienna Convention, meaning it must comply with its mandates. Indeed, because this is a matter of "inviolability of the premises", recognized by the Vienna Convention, Assange was able to spend seven years of his life in the Ecuadorean Embassy without being handed to Sweden or United States. Article 22 of the Convention states the following:

"1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission." The reason why the premises are inviolable is that the mission "*represents a foreign country and it needs to be shielded from any pressure by the host government*" (Kurvalija, 2012).

When the embassy was stormed in 2019, Ecuador had the United Kingdom's consent, so it cannot be argued that the UK violated the inviolable nature of consular premises.

It is also to be noted that Assange also received the Ecuadorean citizenship and later was appointed by Ecuador as diplomatic personnel, with the goal of acquiring diplomatic

immunities. Some years later, when Ecuador revoked Assange the right of asylum, they revoked the Ecuadorean citizenship as well.

5.3. Political implications

The institution of diplomatic asylum has several political implications. This political character can be proved from the mere fact that it is an institution that is recognized in some countries but not in others (Malinowska, 2013).

More specific to Assange's case, Ecuador has been criticized on several occasions for its decision to provide him with diplomatic asylum and accused of using him for its own personal political gains. Lavander (2019) gives his view on this: "From a legal perspective, however, the convergence of interests in the Assange dispute is perhaps the most alluring. At the heart of the conflict is Ecuador, a country that has chosen to protect Assange's 'human rights' while its president, Rafael Correa, continues to suppress freedom of speech and press within Ecuador." Lavander further doubts about Ecuador's real intentions, because of its contradictory positions and raises the question about whether President Correa is legitimately worried about human rights violations or if what this really is is just a "calculated political gamble."

Lavander is not the only author who thinks this way. For instance, A. Evans states that the procedure of granting asylum has two functions, out of which the main one is realizing political interests. The second function is using it as an instrument to defend human rights (Malinowska, 2013). What the author is talking about is political opportunism.

I personally believe that Ecuador granted asylum to Assange for political reasons, because of the history they have with United States. My views are aligned with those of Anita Isaacs (2012) who claims that granting Assange asylum was an attempt by Mr. Correa to settle old scores with the United States and gain some votes from the Latin American left. In a nutshell, as disappointing as it may be, I believe this whole situation had little to do with Assange, "*little if anything to do with Ecuadorean-British relations and everything to do with regional and local politics in the Western Hemisphere. And it has little to do with protecting Mr. Assange's right to a fair trial or freedom of the press — which Ecuador's president, Rafael Correa, has trampled upon at home*" (Isaacs, 2012).

6. HUMAN RIGHTS VIOLATIONS

Our goal in this paper was to tell Julian Assange's story from a human rights perspective. But before doing this, it was necessary to talk about key matters in the case, such as extradition and asylum. Once this has been done, we can move on to analyze the human rights implications in the case.

Human rights are usually regarded as those fundamental and inalienable rights which are essential for life as human beings. There are plenty of international instruments that guarantee human rights. For instance, the European Court of Human Rights and the International Criminal Court.

The United Nation's Universal Declaration of Human Rights adopted in 1948 is the single most relevant document in the history of human rights. Steiner and Alston (1996) have defined it as "*the parent document, the initial burst of enthusiasm and idealism, terser, more general and grander than the treaties, in some sense the constitution of the entire movement – the single most invoked human rights instrument*" (Glendon, 1997). The problem with the UDHR is that it is not legally binding, but its influence cannot be denied on both State's Constitutions and enforceable regional instruments such as the European Convention on Human Rights, the American Convention on Human Rights and the Charter of Fundamental Rights of the EU.

Within this framework, we will focus on the most important articles of the Universal Declaration of Human Rights to address how Julian's rights have been or are being violated.

6.1. Art. 3 UDHR: Right to liberty and security

The first right that we consider violated in the case of Julian Assange is contained in Article 3 of the Declaration, that says the following: "Everyone has the right to life, liberty and the security of person."

This right refers to the physical liberty of the person. Its content focuses on protecting this liberty and therefor avoiding that they are deprived from it in an arbitrary manner.

It is worth mentioning that although "freedom of movement" contained in article 13 UDHR and "right to liberty and security" are similar, they are not exactly the same.

The European Court of Human Rights has explained the difference between the two in the past: “right to liberty is not concerned with mere restrictions on liberty of movement”. In fact, the difference between the two is “*one of degree or intensity, and not one of nature or substance*”. So we could say that although article 3 and article 13 substantially refer to the same violation, article 3 goes one step further in terms of duration, effects etc. (ECHR, 43395/09, 23/02/2017)

Mr. Assange has gone through various stages since the battle started in 2010: his initial detention in the prison in London, a home arrest, his time at the Ecuadorean Embassy (seven years) and his current stay at the Belmarsh prison. As a result of the deprivation of his freedom of movement, Assange’s mental health has suffered many consequences, as he has been isolated for years.

Even though Julian has not been officially charged, his movements have been limited since the European Arrest Warrant was issued in 2010 for him to be extradited to Sweden. Some experts consider this an even worse situation than being in prison, “where at least detainees can breathe fresh air or feel the warmth of the sun from time to time” (Marchand and Schaus, 2016). Since he entered the Ecuadorean Embassy, he was considered a political refugee, so he could not leave the premises.

Right after Ecuador revoked his right to asylum, Assange entered the Belmarsh, a High Security prison in London where he still remains to this day, again limiting his movements.

Now, the question is: can we say Assange’s freedom of movement has been violated to the point of limiting his right to liberty? To answer this, we should take into account the various factors mentioned earlier: type, duration, effects and manner of implementation of the measure (ECHR, 43395/09, 23/02/2017). Firstly, the type of the measure, which has been prison, home arrest and confinement at the Embassy. It is remarkable that Assange still remains at the Belmarsh prison for preventive purposes, while he could instead be home arrested or similar. As for the duration, it has been around twelve years of restrictions of his movements and he has not being charged of any crime yet but a bail violation. Regarding the effects, the implementation of these measures has caused severe effects on Assange, both mental and physical, derived from barely having any human contact. Finally, regarding the manner of implementation, it is to be noted that

while Assange was living in the Embassy there was intense surveillance happening, and when he was imprisoned, his access to lawyers was very limited.

For all these reasons, we conclude that Assange's freedom of movement has been limited to the point that there has been a violation of his right to liberty and security and we find the implemented measures and the way of implementation extreme and disproportionate.

6.2. Art. 5 UDHR: Prohibition of torture, cruel, inhuman or degrading treatment or punishment.

The second right that we consider contravened seats in Article 5 of the Declaration, which states the following: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

For the purpose of analyzing the violation of this right, it is pertinent to mention the open letter that was published in *The Lancet,* called "End of torture and medical neglect of Julian Assange". The letter was written in 2020 by a group of over 200 doctors, who call themselves "*Doctors for Assange",* and that have already written several letters to different parties, to demand that Julian's torture would come to an end.

The letter begins by mentioning Professor Nils Melzer, the United Nations Special Rapporteur on torture that has visited Mr. Assange in prison in the past.

The Professor has declared that his situation can be labeled as psychological torture: "It was obvious that Mr. Assange's health has been seriously affected by the extremely hostile and arbitrary environment he has been exposed to for many years" and that "he has been deliberately exposed, for a period of several years, to progressively severe forms of cruel, inhuman or degrading treatment or punishment, the cumulative effects of which can only be described as psychological torture" (UN News, 2019).

He states that "psychological torture" is "*not torture 'light'"*. The Professor explains that psychological torture destroys a person's personality and destabilizes him. This is done by "making his environment arbitrary, making everything unpredictable, isolating him, depriving him of social contacts and all means of reaffirming his human dignity" (Melzer, 2019). I would like to point out the severity of isolating Assange on the basis that social interaction is indispensable for humans. We are social animals and need

to create strong social connections to survive. During lockdown, many people already suffered from the negative consequences of isolation and given that this only lasted for three months, I think we cannot even get a grasp of how Assange's mental health has shuttered from years of isolation.

Melzer explains that when all these actions are carried out for a prolonged period of time, the victim can suffer from "cardiovascular collapse, nervous breakdown or irreversible neurological damage" (Melzer, 2019).

Mr. Melzer made these declarations in a press conference in New York. We will go through his speech to address how Assange has been subject of psychological torture. The Professor in his talk describes two different phases, being the first one the "Political persecution and Embassy asylum" and the second one the "British detention and judicial arbitrariness" (Melzer, 2019).

In the first phase, Mr. Melzer talks about the visit he paid Assange in the Belmarsh prison in London, where he attended with two experts that assessed his mental and physical state. The Professor thinks that the United States, the United Kingdom, Ecuador and Sweden combined have caused his psychological torture (Melzer, 2019).

Beginning with the United States, Melzer believes it is the biggest responsible, as the fear caused in Assange is the result of a highly possible extradition to the US, that could result in him ending up in a high-security prison and subject to inhumane living conditions (Melzer, 2019).

As for Sweden, the Professor believes all the procedures carried out between 2010 and 2019 have been blatantly arbitrary. He speaks about how the Swedish "preliminary investigation" was unnecessarily delayed, forcing Assange to claim asylum and therefore limiting his movements (Melzer, 2019).

Regarding Ecuador, Mr. Melzer talks about a key moment in which the country went from giving Assange protection to contributing to his psychological torture. He says that this was caused by a change in government, when Moreno got to presidency in 2017, and that they used the Assange matter as an attempt to reconcile with the United States. Professor Melzer states that since this moment Assange's life inside the Embassy took a turn, as mobbing towards him began and there was surveillance for 24 hours a day. He

explains that this type of surveillance is used to drive victims into paranoia (Melzer, 2019).

Regarding the second phase "British detention and judicial arbitrariness" in the Belmarsh prison, Melzer explains that this is the moment when Julian's dramatic deterioration began. More specifically, he highlights the date of November 1st, 2019, as a peak moment in his psychological torture, when he raised his concern at the continued deterioration of Assange's health. When describing this phase, he mentions some of the several due process violations that have taken place in the process, making it unmistakably arbitrary and a threat to Assange's right of defense (Melzer, 2019).

Considering that Julian has been deliberately exposed to this environment for an extended period of time, with no charges against him yet but a bail violation, resulting in him medically ill and nullified as a person, we hold Professor Melzer's opinion that Assange is and has been subject to psychological torture.

6.3. Art. 8. UDHR: Right to effective judiciary.

Continuing with the analysis of the human rights that we consider violated in the case, we find the "Right to effective judiciary", enshrined in Article 8, whose literal wording reads "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

Julian Assange is a born-Australian, hence the Australian government should protect him as a citizen and guarantee the rights entitled to him in the Australian Constitution. Contrary to this, the Australian government has repeatedly rejected requests to employ any suitable legal and diplomatic faculties to avoid Assange from being extradited to the United States. In fact, the only thing Australia has offered him is consular assistance. These are the very own words of Prime Minister Scott Morrison who in April 2019, after Assange's arrest, said: "It has got nothing to do with Australia and it is a matter for the US". Furthermore, the Australian government has stated that they are unable to intervene in the proceedings (Head, 2021).

The country's standpoint has been criticized on several occasions, one of them being the letter written by "Doctors for Assange" in December 2019 to the Australian government. In the letter they talk about the "undeniable legal obligation" the country

must protect its citizen when his fundamental rights are being violated as a consequence of an extradition process started by the US when the only thing Assange has done, exposing US war crimes, is part his job as a journalist (Doctors for Assange, 2019). The letter goes on condemning Australia's behavior over the years, saying they have been the US' accomplices: "The Australian government has shamefully been complicit by its refusal to act, over many years. Should Mr Assange die in a British prison, people will want to know what you, Minister, did to prevent his death" (Doctors for Assange, 2019).

It is true that until local remedies before judicial or administrative courts or bodies are exhausted, international law does not recognize states a right of diplomatic protection. However, there are several exceptions to this rule, with one of the most important being that the state might be able to exercise its diplomatic powers when "significant injury has occurred". (Head, 2021) There are cases in the past where the Australian government has used these powers to protect its citizens, such as in that of David Hicks who was in the Guantanamo Bay prison in Cuba, with the Australian government intervening by asking the US government to release him. Another example is Peter Greste's story, an Australian journalist that was freed after the Australian government acted in the wake of being detained by Egypt during its military dictatorship and found guilty of "terrorism" offences (Head, 2021).

This is to show that the Australian government could intervene in Assange's situation as it has in the past. Stella Assange herself has said that the Australian government could do something about it "and should be speaking to its closest ally to bring this matter to a close" (Lagan, 2022).

But contrary to this, they have only joined forces with the United States to arrest and extradite him. This is something they said themselves, for instance "Attorney-General Robert McClelland said Australia was providing 'every assistance' to US authorities in their investigation" (Head, 2021). Moreover, during Julia Gillard's government (2010-2013), Australia investigated whether Assange could be convicted of any crime under Australian law. Lastly, in February 2020, the assistant secretary for consular operations at the Department of Foreign Affairs and Trade (DFAT) replied to the letter written by "Doctors for Assange" in December 2019, disregarding Nils Melzer's report that Assange is being subjected to psychological torture, and "dismissing the doctors' professional opinion that Assange has not received adequate medical care; and said the government

was confident that Assange would receive 'due process' in the legal proceedings in both the UK and US" (Head, 2021).

In conclusion, Assange's right to effective judiciary is not being fulfilled as it should. Maybe Australia is afraid to angry its closest ally if they ask them to let this go, but it certainly does not have Assange's back as it should.

6.4. Art. 9 UDHR. Prohibition of arbitrary arrest, detention or exile.

As we continue with the examination of the human rights that we believe were infringed, we find the "Prohibition of arbitrary arrest, detention or exile", contained in Article 9, that says the following: "No one shall be subjected to arbitrary arrest, detention or exile".

Because arbitrary detention takes place in almost every country, international law has become increasingly worried about this problem. Consequently, the United Nations attempted to address it through the creation of a group composed by five independent experts: the Working Group on Arbitrary Detention, from now on "WGAD". Their aim is to investigate individual alleged cases of arbitrary detentions and write reports to fulfill their mandate, which is to "investigate cases of deprivation of liberty imposed arbitrarily or inconsistently with the international standards set forth in the Universal Declaration of Human Rights, or the international legal instruments accepted by the States concerned." Even though the mandate does not define what "arbitrary" means, it considers that deprivation of liberty cases which are contrary to the UDHR are in fact so.

On 4 December 2015, the WGAD released Opinion No. 54/2015, in which it considered that Mr. Julian Assange was arbitrarily detained by the Governments of Sweden and the United Kingdom. In the communication, they clearly define what they consider an arbitrary detention and classify the possible situations into five different categories. In their opinion, they determine that Assange's case falls within category III which corresponds to the following: "*When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character*."

The WGAD makes a thorough analysis within the framework that Mr. Assange has been subjected to different forms of deprivation of liberty since 7 December 2010 up to this date, distinguishing three different situations.

Firstly, an initial detention of ten days in the Wandsworth prison in London during which he had no access to legal assistance, in violation of articles 9 and 10 of the UDHR and articles 7, 9(1), 9(3), 9(4), 10 and 14 of the ICCPR. Secondly, he went through a period where he was home arrested for 550 days during which there were harsh restrictions imposed on him, such as an electric tag to monitor him, a duty to report to the police every day and a prohibition on being outside of his home at night. Lastly, they consider that his stay at the Embassy is considered a prolongation of the deprivation of liberty. Regarding the time at the Embassy, they state the following: "Under international law, pre-trial detention must be only imposed in limited instances." Especially when a crime is being investigated and there is not actual charges yet, detention must be even more limited. In the present case, "the only ground remaining for Mr. Assange's continued deprivation of liberty is a bail violation in the UK, which is, objectively, a minor offense that cannot post facto justify the more than 6 years confinement that he has been subjected to since he sought asylum in the Embassy of Ecuador. Mr. Assange should be able to exercise his right to freedom of movement in an unhindered manner, in accordance with the human rights conventions the UK has ratified"

Finally, in its disposition, the Working Group determines that his deprivation of liberty is arbitrary, contravenes the principles of reasonableness, necessity and proportionality and is against 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. Following this, they request both the governments of Sweden and United Kingdom to resolve this situation to ensure his safety, physical integrity and to ensure he can enjoy his rights, apart from dictating that an adequate remedy for this situation would be to end this immediately and give him compensation.

In addition to the 2015 ruling, the WGAD issued two further statements in 2018 and 2019, adding to our belief that Assange's is being arbitrarily detained. We should also add that when the Ecuadorean Embassy was stormed, Assange was imprisoned in the Belmarsh prison in London, in which he served a 50-week sentence for a bail violation. He remains there at the time this paper is being written, January 2023. I believe

this additional time in a High Security prison is unnecessary, excessive, and clearly arbitrary, as there is crime other than the bail violation of which he has been charged yet.

For all this, we conclude that Mr. Assange has been subject of arbitrary detention.

6.5. Art. 10 UDHR: Right to due process:

The "Right to due process" which is established in Article 10 and is literally phrased as “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him” is another human right that we believe has been infringed in this instance.

In relation with 6.4. Prohibition of Arbitrary Arrest, the WGAD has also determined that Mr. Assange has not been guaranteed the international norms of due process and the guarantees to a fair trial during the three different moments that we mentioned earlier: at the Wandsworth prison, the home arrest and his stay at the Ecuadorean Embassy.

The International Covenant for Civil and Political Rights lays out international standards of due process in its articles 9, 14 and 15. More specifically, the Working Group has declared in its Opinion No. 54/2015 that the provisions 9(1), 9(3), 9(4) and 14 have been violated.

Article 9.1 says that “*No one shall be subjected to arbitrary arrest or detention*”, article 9.3 says that “*Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release*”, and article 9.4 mentions that “*Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”*. Finally, Article 14 is very extense, but we should highlight the following: (b) *To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing; (c) To be tried without undue delay; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing.*

Firstly, it should be pointed out that when Assange was initially detained in 2010 for ten days in the Wandsworth prison in London, he had no access to legal assistance, in violation of his right of defense.

One of the most evident ways in which due process was violated is by unnecessarily delaying the process to either charge him or acquit him. For instance, Swedish Prosecution Authorities postponed for nine years any decision to charge Mr. Assange with alleged rape offences. More so, the Swedish investigation was "conveniently dropped when the US extradition request replaced it" (Jiggens, 2022). During the investigation, Mr. Assange never really had the chance to defend himself, and Sweden pursued the case for more than nine years, exposing Julian as a sex offender on the press worldwide, demonizing him and ruining his reputation. Coincidentally right when the United States requested extradition, the Swedish authorities dropped their investigation, suggesting that maybe it was all manufactured from the very beginning.

Another way in which due process has been unmistakably violated is by spying on Assange's client-lawyer conversations. It has been proved that during his time at the Embassy, Julian was subject to intensive surveillance. The issue with this is that while the remedy in a regular trial is to dismiss any evidence obtained through the surveillance, the United States' advantage is not in regard to evidence, but in relation to Assange's lawyers' legal strategy. So, no remedy can be taken to prevent Julian from being at a disadvantage. American attorney James Goodale has stated the following: "The alleged streaming unmasked the strategy of Assange's lawyers, giving the government an advantage that is impossible to remove. Short of dismissing Assange's indictment with prejudice, the government will always have an advantage that can never be matched by the defense" (London and Scripps, 2020).

Furthermore, when Assange was arrested in 2019 by British police, right when his asylum ended, he was convicted for bail violation right away, without being given enough time to prepare the hearing. In addition, Julian was sentenced for 50 weeks of imprisonment for violating bail, being the maximum sentence 52 weeks. It should be noted that in practice, a bail violation in the United Kingdom entails a mere fine, unless the person committed a crime during it. So, while a bail violation constitutes a minor violation, he is being charged as if he had committed a serious crime, as if the United Kingdom was ready to condemn him for the crimes of which the United States has

accused him. The consequences of the violation look even more disproportionate if we take into account that bail and asylum were roughly incompatible, as bail had to be breached in order to have the benefit of asylum, which is a fundamental right (Melzer, 2019).

We should also note that during Assange's extradition trial in February 2020 in the UK, he did not receive a fair treatment. He was "*handcuffed 11 times; stripped naked twice and searched; his case files confiscated after the first day of the hearing; and his request to sit with his lawyers during the trial, rather than in a dock surrounded by bulletproof glass, denied*" (Lawyers for Assange, 2020). This conduct has also been condemned by the International Bar Association's Human Rights Institute (IBAHRI).

Furthermore, the Covid-19 situation worsened all of this, with Assange only attending one of the five hearings that took place and did so by videocall, with the videocall ending sooner than the hearing did. Apart from this, because visits were not allowed during this time, Assange suffered from not being able to prepare for upcoming proceedings with his attorneys, meaning his right to defense was not properly guaranteed (Hogan et al, 2020).

At this moment, Julian Assange is still in the Belmarsh prison where he remained for 50 weeks after violating bail. The reason why he is still there is for preventive purposes, so that he cannot escape the American extradition trial. However, as we mentioned a few paragraphs above, it is quite disproportionate to put him in a high security prison just for preventive purposes, as lighter but equally effective measures could have been taken to achieve this, such as home arrest (Melzer, 2019). For this, I believe that these preventive measures are disproportionate and arbitrary.

In conclusion, I think evidence is sufficient to say that during Julian Assange has not been guaranteed the international norms of due process: unnecessarily delaying the process, a disproportionate sentence for a minor crime, the treatment received during the extradition hearings in the UK and being held in a high-security prison just for preventive purposes are some of the unfair situations he has suffered. In addition, everything points in the direction that due process will not be guaranteed were he finally extradited to the United States.

6.6. Art. 12 UDHR: Right to privacy.

The next right we believe was breached is the "Right to privacy", contained in Article 12, that reads as follows "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

It is now well-known that Assange is married to his former lawyer Stella Morris. But before the couple made it public, there was an order to protect the identities of both Stella and the children they have together. Ms. Morris made the news public right before the anonymity order was almost due to lift. As Assange's lawyers alleged, revealing her identity would have an effect on Stella and Julian's privacy.

On another note, Assange's defense argues that he actions taken by the US against Julian whilst he was in the Ecuadorian embassy were those of a "lawless state" (Westminster Magistrates' Court, 04/01/2021). More specifically, they talk about the US engaging in "unlawful surveillance including monitoring conversations with his lawyers, and a reported plot to kidnap and poison him". The United States, more specifically the CIA during Mike Pompeo's command, has been accused of spying on Assange's lawyers. In fact, Assange's lawyers and two journalists filed a suit in August 2022 regarding this matter. They argue that the CIA teamed up with a security firm to place microphones and other devices in the Ecuadorean Embassy. This not only violates Assange's right to privacy, but it also violates his right to due process, as mentioned before, and his right to defense because it infringes the client-lawyer confidentiality principle, so him receiving a fair trial is more than questionable.

In short, we can say that Assange's right to privacy has been cracked to a point it has affected his right to defense and violated the norms of due process.

6.7. Art. 13 UDHR: Right to freedom of movement

The "Right to freedom of movement", contained in Article 13 of the Declaration states the following: "1. Everyone has the right to freedom of movement and residence within the borders of each State. 2. Everyone has the right to leave any country, including his own, and to return to his country."

The violation of this right has been discussed above, when talking about "Right to liberty and security", and we determined that Assange's limitations of movements have been restricted to the point that they affected his right to liberty and security. For this, we will not discuss the violation of this right any further other than saying that Assange's right to freedom of movement should be ensured as soon as possible.

6.8. Art. 14 UDHR: Right to asylum

We can now move onto the violation of Assange's "Right to asylum", consecrated by Article 14, whose literal wording reads "1. Everyone has the right to seek and to enjoy in other countries asylum from persecution. 2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."

In this section, I would like to touch on two matters that have affected Julian Assange's right to asylum once it was granted by Ecuador. The first one is his 50-week prison sentence in the Belmarsh prison, and the second one is the reasons behind Ecuador giving up Assange after 7 years in the Embassy.

The first matter concerns Assange's conviction to a 50-week prison sentence in a high security prison in London for violating bail. As we mentioned earlier when explaining due process, breaching bail was unavoidable and incompatible with Assange seeking refuge in the Ecuadorean Embassy. Although political asylum is quite controversial and it is not recognized by all countries, the only limitation that art. 14 of the UDHR imposes is that those seeking asylum must be persecuted from a political crime, which I personally believe is the situation Assange is facing. This means that Julian has been punished for seeking refuge from persecution upon the well-founded fears he had in 2012 that he could be extradited to the United States. I say well-founded because while what we knew at the time was just the tip of the iceberg, ten years later Assange's fears are closer than ever to becoming his reality: being extradited to the US. I think Mr. Assange's right to asylum was not taken into account when deciding his sentence, as 50 weeks is just shy from the maximum amount of 52.

Regarding the second one, let's begin by saying that during the last period at the Ecuadorean Embassy, the relationship between Assange and the host became utterly damaged. The Embassy accused him of being a "spoiled brat", and in words of Lenin

Moreno, a “miserable hacker whose only goal is to destabilize governments”. The staff from the Embassy complained of him skateboarding at night, playing loud music and even verbally harassing his caretakers or peeing on the walls (Associated Press, 2019). As a consequence, Assange’s access to the Internet was cut off and his phone calls and visitors were denied, leaving him uncommunicated and as isolated as one can be, even more than in prison. This had a terrible effect on his mental health. I want to point out that this is the official version the Embassy told the world and there surely is more depth to why Assange behaved this way, either as a way of complaining to the Embassy because he was being mistreated or because his mental health was not at its best. In this sense, I do not want to glorify Assange, but neither do I seek to demonize him regarding his behavior at the Embassy. Above all, I share the same view on the matter as Rafael Correa, the Ecuadorean president that originally granted Assange asylum, who said that “while Assange violated the terms of his asylum and was a burden on Ecuador ‘that's no excuse for throwing him to the lions’" (Associated Press, 2019).

To sum up, while the first matter harshly punishes Assange for enjoying his right to asylum, the second one removes it altogether.

6.9. Art. 19 UDHR: Right to freedom of expression

Continuing with the analysis of the human rights that we consider violated in the case, we find the controversial “Right to freedom of expression”, consecrated by Article 19, that reads as follows “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

The commotion regarding the right to freedom of expression is perhaps the heart of the case and the reason why Assange’s story has been so controversial. Because it is not only what will happen to him, but what will happen to people like him. In the countries that follow a Common Law system, precedent is its cornerstone. Precedent requires courts to apply the law in the same manner it was applied in the past to cases with the same facts. This means that if Julian Assange is convicted on the counts he has been accused of and someone in the future ever does something like what he did, which to me falls within the work scope of an independent journalist, the Court would be obliged to apply the law in the same way so that an alike outcome is achieved.

The Obama administration did not indict Assange out of fear that it would harm freedom of expression, as they felt trapped in the First Amendment. As Cook (2021) wrote on the Middle East Eye newspaper, "the problem was, if Assange could be jailed for doing journalism, why not also the editors of the papers he published with? Locking up the senior staff of the New York Times, Guardian and Der Spiegel was never going to be a good look." A sign that politics are heavily involved in this case is that once Trump substituted Obama, the situation drastically changed and Assange's indictment was issued on counts from the Espionage Act 1917, arguing that Julian is a "hacker, not a journalist" (Cook, 2021). Since then, concerns have grown that this might become a turning point for journalists. Reporters Without Borders described the ruling from December 2021 by the High Court of Justice that quashes the previous order that discharged Assange to be extradited to the US as "an 'appalling' decision that 'marks a bleak moment for journalists and journalism around the world'" (Cook, 2021).

But what exactly did Julian do so wrong? What would happen if all journalists or whistleblowers were treated like him? As far as I am concerned, the information he published has served the public interest as we are thanks to it aware of the war crimes committed by the US against civilians in Iraq. People like Assange should not be prevented from doing their job and silenced when they publish truthful information, or the governments' wrongdoings just because they reveal secrets that annoy the powerful. If this case goes forward in the direction that it is going and he finally faces trial in the United States, journalists in the future are going to live in constant fear and the values of a true democracy that the US likes to pride itself on are going to be undermined.

Far from being persecuted, whistleblowers like Assange should be protected. The European Pirate Party has expressed its support for Assange and backed up an amendment which condemns his detention and criminal prosecution. They say whistleblowers like Assange are essential to investigate corruption cases and that they should be protected so they can do their job properly and without fears. Moreover, the Pirates say that what whistleblowers like Assange and Edward Snowden have in common is that they "sacrificed their personal well-being for the benefit of society" (Breyer, 2020). However, the European Parliament has rejected the proposal.

Many other parties have spoken out and tried to take action on this issue. On 28 November 2022, the first media channels to publish WikiLeaks material in 2010, The

Guardian, the New York Times, Le Monde, Der Spiegel, and El País, gathered together to publicly withstand Assange's abuse and pressure the US government to drop the charges against him. They wrote an open letter called "Publishing is not a crime", which warns that the indictment "threatens to undermine America's First Amendment and the freedom of the press". In the letter they express their belief that "holding governments accountable is part of the core mission of a free press in a democracy" (The Guardian, 2022). Furthermore, in December 2022, the International and European Federations of Journalists together with Stella Assange, Julian's wife and lawyer, wrote a letter together to Joe Biden, asking him to pardon Assange. In the letter, they talk about how he has contributed to bringing to light controversial but truthful acts of the United States and how he should not be punished for doing what any other serious, independent journalist would have done. They express that if allowed to stand, these charges will undoubtedly threaten and limit the ability of future journalists to report on matters of public interest, knocking off the "fundamental principles of a free and open society" (IFJ, 2022).

In conclusion, were the United States to succeed with their claims, it will be a dark moment for journalistic freedom, as setting a precedent as dangerous as this will mean that like Assange, journalists will suffer never-ending harsh consequences for doing their job.

6.10. Art. 25 UDHR: Right to an adequate standard of living.

Moving towards the end of the analysis, we find the "Right to an adequate standard of living", contained in Article 25, that states that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

To analyze the violation of this right, it is pertinent to talk about the first Open Letter written by "*Doctors for Assange"* in 2019, directed towards the UK Government. The letter, which demands an end to the torture and medical neglect of Assange, talks about his inability to exercise his right to medical assessment and treatment throughout the seven years he spent in the Embassy. The letter details in chronological order all the medical issues Assange has suffered through the years and how he has been denied access

to healthcare. In its conclusion, the letter states that Mr. Assange requires an urgent expert medical examination of "both his physical and psychological state of health in a properly equipped and expertly staffed university teaching hospital". The Doctors emphasize that if an urgent assessment and treatment does not take place Mr. Assange could die in prison, based on the evidence available.

Apart from being medically neglected, during his time in the Embassy Assange was subject of a highly controlled environment and harsh conditions of isolation.

To sum up, when we add up these three factors for an extended period of time, we end up with an individual with poor physical and mental health caused by an inadequate standard of living.

6.11. Art. 28 UDHR: Right to a social and international order.

We end this section by mentioning the violation of the "Right to a social an international order", contained in Article 28, whose literal wording says that "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."

In other words, the values in the Declaration should be pursued. Society as a whole, with governments included have a duty to fulfill the provisions of the Declaration. Far from this, the governments of Sweden, United States, United Kingdom and Ecuador have only cooperated in a process that looks like an international witch-hunt.

In conclusion, we determine that Assange's human rights have been violated. It should not be taken lightly that two United Nations bodies have ruled his detention to be arbitrary and amounting to psychological torture: the Working Group on Arbitrary Detention and the Special Rapporteur on Torture.

7. CONCLUSIONS

Having determined that Mr. Assange's human rights have been and are being violated, I believe the major concern now is whether something can be done about it, legally speaking.

Before focusing on the conclusions regarding the human rights violations, I want to mention two legal issues encountered with extradition law and with the institution of diplomatic asylum.

Firstly, I believe that the modification of domestic British law that removed the protection of political offenses ("Political offense exception") has taken place at the worst time for Assange. This probably would have been Julian's lawyers' strongest bullet. But unfortunately, they cannot argue he is being sought for political offenses and the arguments must be based on the law as it stands. From my point of view, removing this protection leaves whistleblowers in a very vulnerable position and undermines their most basic and fundamental protection: being handed over to another country for a political offense. All in all, it is a shame that a question that lies at the heart of the matter will not even be addressed, and we will have to wait to see if a review of extradition law brings the reintroduction of some form of political offence exception. Regrettably, if ever to come, it will be too late for Assange.

Regarding the institution of diplomatic asylum, in my opinion international law has failed to address it and should attempt to do so to lessen the problems that come with it. At this moment, the institution has been left in the hands of governments who may use it to act in good or bad faith. In my opinion, it is inadmissible that countries use an instrument that is intended to be a tool to protect human rights as a mean to realize political interests. Since when is it acceptable for a person's life to hang on the relationship between two countries? Coincidence or not, Assange was granted asylum in a moment when Ecuador and the United States were not at their best and it was withdrawn from him at a time when there was a rapprochement between the countries. Having said this, I believe it is necessary to come up with a binding international standard on the admissibility of the institution of diplomatic asylum to clarify its role as a means of protecting human rights, so that positive or poor foreign relations between nations will not impact the future of an individual.

Moving onto the conclusions regarding the human rights violations, we start of the base that the problem with the Universal Declaration of Human Rights is that it does not have the power to be legally enforced. However, its importance is undeniable, as its content is embodied in other legally binding documents.

On the European level we have the European Convention on Human Rights, which bounds the States that have ratified it. Because these States are responsible for securing the rights contained in the convention, they are subject to the supervisory jurisdiction of the European Court of Human Rights. This legal instrument protects the same content of the rights we mentioned in Section 6 in relation with the Declaration: prohibition of torture, right to liberty and security, right to a fair trial, right to respect for private and family life, freedom of expression and right to an effective remedy. So, even if the Declaration is not enforceable in a direct manner, its content is through the application of the European Convention. In fact, Assange has already filed a case against the United Kingdom at the European Court of Human Rights which we hope solves in his favor.

In UK Law, there is the Human Rights Act 1998, which transposes many of the articles of the European Convention into English Law, therefor being fully enforceable.

Finally, the US Constitution, which is the United States' fundamental law also recognizes some of the most basic rights contained in the UDHR. More specifically, the Bill of Rights, which includes the first ten amendments to the Constitution protects freedom of speech, prohibits the federal government from depriving any person of life, liberty or property without due process of law and guarantees a speedy public trial with an impartial jury, among others.

So even if the Universal Declaration of Human Rights is not legally binding, we have several other instruments that cover its substantive content that are legally enforceable, giving the European Court of Human Rights and other courts of law in both the UK and the US sufficient grounds to stop this joint pursuit altogether.

Ultimately, if the rulings by the UK and the European Court of Human Rights fail and Assange eventually faces trial in the United States, it will be a dark day for human rights, especially for freedom of expression and for all independent journalists that put their lives at risk to serve the public interest. Without people like Assange denouncing state crimes, many relevant issues would not come to light, and we would not be able to find out about big cases of corruption or organized crime.

Although we are still on time for a "happy ending", the harm has already been done, and Julian Assange's story will forever stain the governments of the United States, Australia, Sweden, the United Kingdom and Ecuador.

I would like to end this paper with a thought-provoking sentence: "To deny people their human rights is to challenge their very humanity." –Nelson Mandela

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