

Press Release

Inter-American Court of Human Rights

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ADVISORY OPINION ON THE INSTITUTION OF ASYLUM AND ITS RECOGNITION AS A HUMAN RIGHT IN THE INTER-AMERICAN SYSTEM OF PROTECTION

San José, Costa Rica, 12 July 018.- On May 30, 2018, the Inter-American Court of Human Rights (“the Court”) issued an Advisory Opinion on the Institution of Asylum and its Recognition as a Human Right in the Inter-American System. Notice was given to the parties today. This Advisory Opinion was requested by the State of Ecuador. The text of the Opinion can be found [here](#).

The Court interpreted the reach of the protection given under Article 22(7) of the American Convention on Human Rights and Article XXVII of the American Declaration on the Rights and Duties of Man, which recognize the right to seek and receive asylum in a foreign territory.

In particular, the Court declared upon the relative issue of whether this human right protects both territorial asylum and diplomatic asylum. Similarly, the Court determined the human rights obligations of Member States of the Organization of American States regarding the host country and, in this case, for third States, in virtue of the risk that persons seeking international protection could suffer, which was the reason for the principle of *non-refoulement*.

Starting with the inclusion of the term “in a foreign territory” within the instruments, (which clearly refers to the protection derived from territorial asylum as opposed to diplomatic asylum), and in an analysis of the preparatory work of the American Declaration regarding the choice of the States to omit the concept of diplomatic asylum as a protected classification under such human rights norms, the Court held that, given the protections enshrined by Article 22(7) of the American Convention and Article XXVII of the American Declaration, the right to seek and receive asylum can be contemplated as a human right to seek and receive international protection in a foreign territory, including refugee status under the relevant United Nations instruments or corresponding national laws as well as territorial asylum under the different Inter-American conventions on the topic. Similarly, the Court concluded that the scope and breadth of diplomatic asylum should be governed by the appropriate interstate conventions and the provisions of internal legislation, considering that the States have the sovereign right to choose whether to grant such asylum.

In addition, the Court emphasized that the general obligations established by the American Convention are applicable to the conduct of diplomatic agents deployed to the territories of third States, whenever the nexus of personal jurisdiction can be established with the particular person. In this vein, the Court considered that the ambit of protection against *refoulement* (that is, the prohibition on sending a person back to the territory in which their life, integrity, security, and/or liberty may be at risk due to persecution or threat of persecution, generalized violence, or massive human rights violations, among others, as well as where they run the risk of being subjected to torture or other cruel, degrading, or inhuman treatment, or to a third State from which they could be sent to a territory where they could incur these risks) is not only limited to

persons who may be found in the territory of the State, but also obliges States extraterritorially whenever authorities exercise their authority or effective control over such persons, as may happen in legations, that, by their own nature, may be in the territory of another State with that State's consent and authorization. The Court added that host States under whose jurisdiction the person falls who had requested protection in diplomatic headquarters have the obligation to adopt positive measures regarding an individualized evaluation of risk, such as the opportunity of a personal interview or a preliminary evaluation of the risk of *refoulement*, as well as the obligation to adopt adequate means of protection, including those against arbitrary detention. Thus, States must arbitrate all the necessary means to protect persons in the event of a real risk to their life, integrity, liberty, or security if they were sent back. Similarly, since the legal status of the person cannot stay in limbo or be prolonged indefinitely, States must adopt measures which expedite suitable safe passage, which is why the Court recalled that the duty of cooperation between States in the promotion and observance of human rights is an *erga omnes* norm.

The entire text of the Advisory Opinion can be found [here](#) and the official summary [here](#). In the context of the procedural history, which is thoroughly participatory, 55 written observations were received on behalf of States, state bodies, international and national organizations, academic institutions, non-governmental organizations, and individuals. The writings can be found [here](#). In the context of the current Advisory Opinion, a public hearing was held on August 24 and 25, 2017, in San José, Costa Rica, where the Court heard oral observations from 26 delegations. The video of the hearing can be accessed [here](#).

The composition of the Court for this Advisory Opinion included the following: Judge Eduardo Ferrer Mac-Gregor Poisot, President; Judge Eduardo Vio Grossi, Vice-President); Judge Humberto Antonio Sierra Porto; Judge Elizabeth Odio Benito, y Judge L. Patricio Pazmiño Freire.

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