INTER-AMERICAN COURT OF HUMAN RIGHTS

ADVISORY OPINION OC-25/18
OF MAY 30, 2018
REQUESTED BY THE REPUBLIC OF ECUADOR

THE INSTITUTION OF ASYLUM AND ITS RECOGNITION AS A HUMAN RIGHT IN THE INTER-AMERICAN PROTECTION SYSTEM (INTERPRETATION AND SCOPE OF ARTICLES 5, 22(7) AND 22(8), IN RELATION TO ARTICLE 1(1) OF THE AMERICAN CONVENTION ON HUMAN RIGHTS)

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal"), composed of the following judges[*]:

Eduardo Ferrer Mac-Gregor Poisot, President;
Eduardo Vio Grossi, Vice President;
Humberto Antonio Sierra Porto, Judge;
Elizabeth Odio Benito, Judge, and
L. Patricio Pazmiño Freire, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to articles 64(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles, 70 to 75 of the Rules of Procedure (hereinafter "the Court's Rules of Procedure"), delivers the following Advisory Opinion, structured as follows:

[*] Judge Eugenio Raúl Zaffaroni did not attend the 124th Ordinary Period of Sessions of the Inter-American Court for reasons of force majeure, which was accepted by the Plenary. For this reason, he did not participate in the deliberation and signing of this advisory opinion.

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I.
PRESENTATION OF THE REQUEST

1. On August 18, 2016, the Republic of Ecuador (hereinafter "Ecuador," "State of Ecuador" or the "requesting State"), submitted—based on Article 64(1)[1] of the American Convention and in accordance with the provisions of Article 70(1) and 70(2)[2] of the Rules of Procedure—a request for an advisory opinion on "the institution of asylum in its different forms and the legality of its recognition as a human right corresponding to all people under the principle of equality and non-discrimination" (hereinafter, "the consultation" or "the request").

2. Ecuador presented the considerations that led to the request and noted that:

> From their origins as independent republics, Latin American States have maintained a growing concern regarding the protection of fundamental rights such as life, personal integrity, safety, and [the] freedom of those who have committed politically motivated crimes or have been victims of acts of political persecution or acts of discrimination. In the case of political offenders, accusations of common crimes aimed at preventing the granting of such protection or at ceasing it have been frequent, in order to subject these persons to punitive measures under the guise of legal proceedings. Consequently, both Latin American constitutions and the […] inter-American system have established the institutions of territorial asylum, comparable to refuge, and diplomatic asylum in diplomatic headquarters, among other places legally assigned for this purpose.
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> The institution of diplomatic asylum [was] initially conceived as [a] power of the granting State, and transformed into [a] human right after its enshrinement in various human rights instruments, such as the American Convention [on] Human Rights, in its article 22(7), or the American Declaration of [the] Rights and Duties of Man, in its article XXVII. [This is] an institution that has been specifically codified through regional treaties, the first being the Treaty on International Criminal Law, of 1889, and the latest, the Conventions on Diplomatic Asylum and Territorial Asylum of Caracas, of 1954. These instruments on diplomatic and territorial asylum, together with the figure of non-extradition for political reasons, have come to be called the *Latin American tradition of asylum*.
>
> Ecuador considered[ed] that when a State grants asylum or refuge, it places the protected person under its jurisdiction, whether it grants asylum in application of Article 22(7) of the American Convention [or] that it recognizes refugee status under the Geneva Convention of 1951.
>
> Therefore, Ecuador interpret[ed] that[,] these international instruments have clearly demonstrated the will of the international community as a whole to recognize asylum as a right that is exercised universally and in any modality or form that it adopts based on the laws of the receiving State and/or that established in international agreements.
>
> In Ecuador's opinion, all the clauses[, such as Article 5 of the 1951 Convention,] confer unity and continuity to the right of asylum or refuge in such a way that the recognition of this right is carried out effectively to the extent that it strictly fulfills the principle of equality and non-discrimination. […] Therefore, it is not possible to make an unfavorable distinction between asylum and refuge[,]

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[1] Article 64 of the American Convention: "1 . The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court. 2. The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

[2] The relevant parts of Article 70 of the Rules of Procedure of the Court establish that: "1 . Requests for an advisory opinion under Article 64(1) of the Convention shall state with precision the specific questions on which the opinion of the Court is being sought. 2. Requests for an advisory opinion submitted by a Member State or by the Commission shall, in addition, identify the provisions to be interpreted, the considerations giving rise to the request, and the names and addresses of the Agent or the Delegates."

since that most important to the right is that the protected person be safe under the jurisdiction of the State providing asylum.

Articles 22(7) of the American Convention and 14(1) of the Universal Declaration of Human Rights establish the right to asylum without distinguishing or differentiating between the different modalities, forms, or categories[,...] since the granting of this right is a prerogative of the receiving state as set out in its own law and is inherent to its sovereignty. Therefore, the receiving State is[,] ultimately[,] the one that has the capacity to determine whether to grant this right to persons having well-founded fears of being actual or potential victims of politically motivated acts of persecution or of any form of discrimination that such persons perceive as a real or potential threat to their life, personal integrity, freedom, and security. […] Under these conditions, the receiving State fulfills an important political and social role by providing protection to political offenders and to those who are victims of discrimination, protecting such people through its laws and institutions because they are under its jurisdiction.

[In accordance with the foregoing, for Ecuador, all forms of asylum have […] universal validity, this condition being the inevitable consequence of the legal universality of the principle of non-refoulement, whose absolute nature equally covers the granted asylum by virtue not only of a universal convention, but also of a regional agreement or the domestic law of a State.

[The State of Ecuador highlighted that, according to] Article 41 of its Constitution, it recognizes both rights, that is, the right to seek asylum and the right to seek refuge; for each case, diplomatic asylum and territorial asylum. Add to this the fact that Ecuador is a signatory to the Diplomatic and Territorial Asylum Conventions existing in the inter-American system, and is also a State Party to the 1951 Geneva Convention on the Status of Refugees, as well as its New York Protocol of 1967.

In the same way, asylum […] generates […] other *erga omnes* obligations, including the obligation of a State that is not a signatory to a certain asylum convention, not to hinder, impede, or interfere in any way that prevents the State that is a signatory to said convention from complying with the commitments and obligations that allow effective and timely protection of the fundamental rights of the asylee or refugee.

The rules of interpretation contained in both the American Convention in its article 29 and the International Covenant on Civil and Political Rights, in its article 5(1), as well as the Vienna Convention on the Law of Treaties, of 1969, in its articles 31 and 32, as well as the *pro homine* principle*,* allow a broad scope and content to be attributed to Article 22(7) of the American Convention, in that related to the different forms of asylum projecting this norm towards its universality.

The Inter-American Court has issued important rulings on several of the human rights principles and norms that[,] directly or *inter alia*[,] have an impact on the effective application of Article 22(7) of the Convention.

On this prescriptive basis, Ecuador seeks to clarify the nature and scope of the institution of asylum in order to determine the interpretation that ensures the most effective validity of Article 22(7) of the American Convention.

3. Based on the foregoing, Ecuador submitted the following specific questions to the Court:

a) Especially bearing in mind the principles of equality and non-discrimination for reasons of any social condition set forth in articles 2(1), 5 and 26 of the International Covenant on Civil and Political Rights, the *pro homine* principle, and the obligation to respect all human rights of all persons in all circumstances and without unfavorable distinctions, as well as Articles 31 and 32 of the Vienna Convention on the Law of Treaties, Article 29 of the American Convention on Human Rights, and articles 28 and 30 of the Universal Declaration of Human Rights, is it possible for a State, group, or individual to carry out actions or adopt conduct that in practice means disregarding the provisions established in the aforementioned human rights instruments, including Article 5 of the Geneva Convention on the Status of Refugees[,] in such a way that Articles 22(7) and XXVII of the

American Convention and the American Declaration on the Rights and Duties of Man, respectively, are attributed restricted content in regarding the form or modality of asylum, and what legal consequences should be produced on human rights and fundamental freedoms of the person affected by said regressive interpretation?

b) Is it possible for a State that is not a signatory to a certain convention on asylum to hinder, impede, or limit the action of another State that is party to said convention in such a way that it cannot comply with the obligations and commitments undertaken by virtue of said instrument, and what should be the legal consequences of such conduct for the asylee?

c) Is it possible for a State that is not a signatory to a certain convention on asylum, or that belongs to a regional legal regime different from the one on the basis of which asylum was granted, to hand over someone who enjoys asylum or refugee status to the agent of persecution, violating the principle of non-refoulement, arguing that the asylum-seeker loses their right to asylum because they are in a country foreign to said legal regime[,] when exercising their right to free human mobility[,] and what should be the legal consequences derived from said conduct on the right to asylum and the human rights of the asylum seeker?

d) Is it possible for a State to adopt a conduct that in practice limits, diminishes, or undermines any form of asylum, arguing that it does not confer validity to certain statements of ethical and legal value such as the laws of humanity, the dictates of public conscience and universal morality, and what should be the consequences of a legal order that would arise from ignorance of these statements?

e) Is it possible for a State to deny asylum to a person who requests said protection in one of its diplomatic headquarters, arguing that granting it would be a misuse of the Embassy's premises, or that granting it in this way would unduly extend diplomatic immunities to a person without diplomatic status, and what should be the legal consequences of such arguments on the human rights and fundamental freedoms of the affected person, taking into account that they could be a victim of political persecution or acts of discrimination?

f) Is it possible for the receiving State to deny an asylum or refuge application or revoke the status granted as a result of the complaints filed or the initiation of legal proceedings against said person when there are clear indications that said complaints have a political motive and that returning the asylee could give rise to a chain of events that would end up causing serious harm to the person, namely, capital punishment, life imprisonment, torture, and cruel, inhuman, and degrading treatment of the requested person?

g) Considering that States have the power to grant asylum and refuge [based on] express provisions of international law that recognize these rights based on humanitarian reasons and the need to protect the weakest and most vulnerable when certain circumstances cause well-founded fears in such persons about their safety and freedom. This prerogative may be exercised by the State in accordance with Article 22(7) of the American Convention, Article 14(1) of the Universal Declaration of Human Rights, the express provisions of the 1951 Geneva Convention on the Status of Refugees, and its Protocol of New York of 1967, as well as regional conventions on asylum and refuge, and norms pertaining to the internal order of such States, provisions that recognize the right of qualification in favor of the host State, which includes the evaluation and assessment of all the elements and circumstances that fuel the fears of the asylum seeker and justify their search for protection, including the common crimes that the agent of persecution intends to attribute to them, as this fact is reflected in articles 4(4) and 9(c) of the American Conventions on Extradition and Mutual Legal Assistance in criminal matters, respectively.

Therefore, in accordance with the foregoing premises and in light of the *erga omnes* obligation of the prohibition of torture, as stated in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of 1984, and of articles 5, 7, and 8 of the American Convention on Human Rights of 1969 (which establish the right to personal integrity, the right to personal liberty, and the right to judicial guarantees, respectively), if a mechanism for the protection of human rights belonging to the United Nations System were to determine that the conduct of a State can be interpreted as a lack of recognition of the qualification right exercised by

> the State that grants asylum, thus causing an undue extension of the asylum or refuge, which is why said mechanism has proven that the procedure in which said State has incurred entails the violation of the procedural rights of the refugee or asylum seeker, included both in the aforementioned clauses of the American Convention and in Articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights (the right not to be subjected to torture or cruel, inhuman, or degrading treatment or punishment; the right to personal liberty and security so that no one can be subjected to arbitrary detention or imprisonment; the right to the inherent dignity of the human being to which every person deprived of liberty has; and, the right to equality of all persons before the courts and tribunals of justice, as well as to other judicial guarantees), can the State that has been the subject of the resolution or opinion of a multilateral mechanism belonging to the United Nations System, through which responsibility is attributed to it in the violation of the rights of an asylum-seeker or refugee enshrined in Articles 5, 7, and 8 of the American Convention, and Articles 7, 9, 10, and 14 of the International Covenant on Civil and Political Rights, request judicial cooperation in criminal matters from the receiving State without taking into account the aforementioned opinion or its responsibility for the impairment of the rights of the asylum seeker?

4. The requesting State appointed María Carola Iñiguez Zambrano, Undersecretary for International Supranational Organizations of the Ministry of Foreign Affairs as its agent, and Ambassador Claudio Cevallos Berrazueta as its alternate agent for this request. In addition, Ecuador appointed Ambassador Pablo Villagómez and Mr. Baltasar Garzón Real as its advisors.

II.
PROCEEDINGS BEFORE THE COURT

5. Through notes of November 17, 2016, the Secretariat of the Court (hereinafter "the Secretariat"), in accordance with the provisions of Article 73(1)[3] of the Rules of Procedure, transmitted the query to the other member states of the Organization of American States (hereinafter "the OAS"), the OAS Secretary General, the President of the OAS Permanent Council, the President of the Inter-American Juridical Committee, and the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission"). These communications indicated that the Presidency of the Court, in consultation with the Court, had set March 31, 2017, as the deadline for submitting written observations regarding the aforementioned request. Likewise, following instructions from the President and in accordance with the provisions of Article 73(3)[4] of the Rules of Procedure, the Secretariat, through notes of November 22, 2016, invited various international organizations and civil society and academic institutions of the region to submit their written opinions on the points raised for consultation by the aforementioned deadline. Finally, an open invitation was issued through the Court's website to all interested parties to present their written opinions on the points raised for consultation. The deadline expired, and an extension was made until May 4, 2017, which resulted in approximately six months to send in their observations.

6. The term granted expired and the following written observations were received by the Secretariat[5]:

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[3] Article 73(1) of the Court's Rules of Procedure: "Upon receipt of a request for an advisory opinion, the Secretary shall transmit copies thereof to all of the Member States, the Commission, the Permanent Council through its Presidency, the Secretary General, and, if applicable, to the OAS organs whose sphere of competence is referred to in the request."

[4] Article 73(3) of the Court's Rules of Procedure: "The Presidency may invite or authorize any interested party to submit a written opinion on the issues covered by the request. If the request is governed by Article 64(2) of the Convention, the Presidency may do so after prior consultation with the Agent."

[5] The request for an advisory opinion submitted by Ecuador, the written and oral observations of the participating States, the Inter-American Commission, as well as international and state organizations, international and national associations, academic institutions, non-governmental organizations, and civil society individuals, can be consulted on the Court's website at the following link: http://www.corteidh.or.cr/cf/jurisprudencia2/observaciones_oc.cfm?nId_oc=1704

a. Written observations submitted by OAS States: 1) Argentine Republic (hereinafter "Argentina"); 2) Belize; 3) Plurinational State of Bolivia (hereinafter "Bolivia"); 4) Republic of Guatemala (hereinafter "Guatemala"); 5) Jamaica; 6) United Mexican States (hereinafter "Mexico"), and 7) Republic of Panama (hereinafter "Panama").

b. Written observations submitted by OAS bodies: Inter-American Commission on Human Rights;

c. Written observations submitted by international organizations: Office of the United Nations High Commissioner for Refugees (UNHCR);

d. Written comments submitted by intergovernmental and state bodies, international and national associations, non-governmental organizations, and academic institutions: 1) Institute for Public Policies on Human Rights (IPPDH) of MERCOSUR; 2) Inter-American Association of Public Defenders (AIDEF); 3) Public Defender of the Union of Brazil; 4) Human Rights Commission of the Federal District of Mexico; 5) Norwegian Refugee Council; 6) Center for International Law (CEDIN); 7) Asylum Access Ecuador; 8) Spanish Association for International Human Rights Law; 9) Department of Camex Oxlajuj Ix and International Verification Mission (MIV); 10) International Legal Office for Cooperation and Development (ILOCAD) and other interested parties that sign the document; 11) Without Borders IAP; 12) Mexican Commission for the Defense and Promotion of Human Rights; 13) José Simeón Cañas Central American University; 14) Center for Human Rights of the Andrés Bello Catholic University; 15) Faculty of Law and Political Sciences of the University of San Buenaventura Cali; 16) Department of Constitutional Law of the Colombia University Day School; 17) Autonomous Technological Institute of Mexico (ITAM); 18) Center for Human Rights of the Pontifical Catholic University of Ecuador; 19) Faculty of Legal and Social Sciences of the Rafael Landívar University; 20) School of Law of the EAFIT Medellín University; 21) Tijuana Law School of the Autonomous University of Baja California; 22) University College London "Public International Law Pro Bono Project"; 23) Antônio Eufrásio de Toledo University Center of Presidente Prudente; 24) Clinic of Human Rights and Environmental Law of the University of the State of Amazonas; 25) Clinic for Migrants, Refugees and Human Trafficking of the Public Interest Group of the Universidad del Norte; 26) Faculty of Law of the University of the State of Rio de Janeiro; 27) Human Rights Legal Clinic of the Pontificia Universidad Javeriana-Cali; 28) International Migrants Bill of Rights Initiative Georgetown University Law Center; 29) Faculty of Law of the University of Costa Rica; and 30) Law School of the University of São Paulo;

e. Written observations submitted by individuals from civil society: 1) Martha Cecilia Olmedo Vera; 2) Luis Peraza Parga; 3) Professors and Researchers of Pontificia Universidade Católica do Paraná, Centro Universitário Autônomo do Brasil e Faculdade Campo Real; 4) José Benjamín González Mauricio and Rafael Ríos Nuño; 5) Jorge Alberto Pérez Tolentino; 6) María-Teresa Gil-Bazo of Newcastle University; 7) Bernardo de Souza Dantas Fico; 8) Ivonei Souza Trindade; 9) Gloria María Algarín Herrera, Lizeth Paola Charris Díaz, Ana Elvira Torrenegra Ariza, and Andrea Rodríguez Zavala of Andrea Rodríguez Zavala Abogados; 10) Alejandro Ponce Martínez and Diego Corral Coronel of Estudio Jurídico Quevedo & Ponce; 11) Sergio Armando Villa Ramos; 12) José Manuel Pérez Guerra; 13) María del Carmen Rangel Medina and Dante Jonathan Armando Zapata Plascencia; 14) David Andrés Murillo Cruz; 15) Juan Carlos Alfredo Tohom Reyes, Wendy Lucía To Wu, Juan José Margos García and Mario Alfredo Rivera Maldonado; and 16) Manuel Fernando García Barrios.

7. Once the written procedure was completed, on June 15, 2017, the President of the Court issued an order—in accordance with the provisions of Article 73(4) of the Rules of Procedure[67]—calling a public hearing, inviting the requesting State and other OAS Member states, its Secretary General, the President of the OAS Permanent Council, the President of the Inter-American Juridical Committee, the Inter-American Commission on Human Rights, and the members of a wide variety of international organizations, civil society, academic institutions, and all those who submitted their written observations to give their oral comments to the Court regarding the consultation.

8. The public hearing was held on August 24 and 25, 2017, within the framework of the 119th Regular Period of Sessions of the Inter-American Court of Human Rights, held in San José, Costa Rica.

9. The following persons appeared before the Court:

1) For the requesting State, the Republic of Ecuador: Rolando Suárez, Vice Minister of Foreign Affairs, Political Integration and International Cooperation; Pablo Villagómez, Head of the Ecuadorian Mission to the European Union; Carola Íñiguez, Undersecretary for Multilateral Affairs of the Ministry of Foreign Affairs and Human Mobility; Ricardo Velasco, Director of Human Rights of the Office of the Prosecutor General; Claudio Cevallos, Ambassador of Ecuador in Costa Rica; Pablo Salinas, First Secretary of the Ecuadorian Mission to the European Union; Carlos Espín and Alonso Fonseca, advisers;
2) For the State of Argentina: Javier Salgado, Director of the International Litigation Directorate in Human Rights Matters, and Gonzalo L. Bueno, Legal Adviser of the International Litigation Directorate in Human Rights Matters;
3) For the Plurinational State of Bolivia: Jaime Ernesto Rossell Arteaga, Deputy State's Attorney for Defense and Legal Representation of the State, and Roberto Arce Brozek, General Director of Defense in Human Rights and Environment;
4) For the United Mexican States: Alejandro Alday González, Legal Consultant of the Ministry of Foreign Affairs; Melquíades Morales Flores, Ambassador of Mexico in Costa Rica, and Óscar Francisco Holguín González, in charge of legal, political and press affairs of the Mexican embassy in Costa Rica;
5) For the Inter-American Commission on Human Rights: Luis Ernesto Vargas Silva, Commissioner; Álvaro Botero Navarro and Selene Soto Rodríguez, Advisors;
6) For the United Nations High Commissioner for Refugees (UNHCR): Juan Carlos Murillo González, Head of the Regional Legal Unit for the Americas, and Luis Diego Obando, Legal Officer;
7) For the Inter-American Association of Public Defenders (AIDEF): Marta Iris Muñoz Cascante, Director of the Public Defense of the Republic of Costa Rica and Coordinator for Central America; Sandra Mora Venegas, and Abraham Sequeira Morales;
8) For the Human Rights Commission of the Federal District of Mexico: Federico Vera Pérez, Executive Director of Legislative Affairs and Evaluation of the CDHDF;
9) For the Norwegian Refugee Council: Efraín Cruz Gutiérrez;
10) For Asylum Access Ecuador: Xavier Gudiño and Daniela Ubidia;

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[6] Article 73(4) of the Court's Rules of Procedure: "[a]t the conclusion of the written proceedings, the Court shall decide whether oral proceedings should take place and shall establish the date for a hearing, unless it delegates the latter task to the Presidency. Prior consultation with the Agent is required in cases governed by Article 64(2) of the Convention."

[7] *Cf.* Request for Advisory Opinion OC-25. Call to hearing. Order by the President of the Inter-American Court of Human Rights of June 15, 2017. Available at: http://www.corteidh.or.cr/docs/asuntos/solicitud_15_06_17_esp.pdf.

11) By the Camex Oxlajuj Ix Council and International Verification Mission (MIV): Mayra Alarcón Alba, Executive Director of the Camex Oxlajuj Ix Council; Sister Leticia Gutierrez; Father Juan Luis Carbajal; Sergio Blanco and Patricia Montes;
12) For the International Legal Office for Cooperation and Development (ILOCAD) and other interested parties that sign the document: Baltazar Garzón Real and Alan Aldana;
13) For the Law School of the EAFIT Medellín University: Laura Aristizábal Gutiérrez; Mariana Duque R., and Mariana Ruiz Uribe;
14) For the Tijuana Law School of the Autonomous University of Baja California: Elizabeth Nataly Rosas Rábago; Sofía Arminda Rascón Campos, and Samuel Cabrera Gutiérrez;
15) For the University College London "Public International Law Pro Bono Project": Luis F. Viveros Montoya, Frania Colmenero Segura and Kimberley Trapp;
16) For the "Antonio Eufrásio de Toledo University Center of Presidente Prudente": Gabriel D'Arce Pinheiro Dib and Guilherme de Oliveira Tomishima;
17) For the "Human Rights and Environmental Law Clinic" of the University of the State of Amazonas: Sílvia Maria da Silveira Loureiro and Victoria Braga Brasil;
18) For the "Núcleo de Estudos e Pesquisa em Direito Internacional" of the Faculty of Law of the State University of Rio de Janeiro: Raphael Carvalho de Vasconcelos and Lucas Albuquerque Arnaud de Souza Lima;
19) For the Human Rights Legal Clinic of the Pontificia Universidad Javeriana-Cali: Raúl Fernando Núñez Marín, and Iván Darío Zapata;
20) María-Teresa Gil-Bazo from the University of Newcastle;
21) Bernardo de Souza Dantas Fico;
22) Andrea Rodriguez Zavala and Ana Elvira Torrenegra Ariza for the office Andrea Rodriguez Zavala Attorneys;
23) Diego Corral Coronel for the Quevedo & Ponce Law Firm;
24) Sergio Armando Villa Ramos;
25) Wendy Lucía To Wu and Juan José Margos García also representing Juan Carlos Alfredo Tohom Reyes and Mario Alfredo Rivera Maldonado, and
26) Manuel Fernando García Barrios.

10. After the hearing, additional briefs were received[8] from: 1) the State of Ecuador; 2) the International Legal Office for Cooperation and Development (ILOCAD); 3) the Human Rights and Environmental Law Clinic of the Amazonas State University; 4) the Center for International Law Studies and Research of the Faculty of Law of the State University of Rio de Janeiro; 5) the School of Law of the EAFIT Medellín University and 6) María-Teresa Gil-Bazo of the University of Newcastle.

11. For the resolution of this request for an advisory opinion, the Court examined, took into account, and analyzed the 55 briefs of observations, as well as the 26 contributions given during hearings and interventions by States, OAS bodies, international organizations, state bodies, non-governmental organizations, academic institutions, and people from civil society (*supra* paras. 6 and 9). The Court is grateful for these valuable contributions, which helped enlighten it on the different issues submitted for consultation for the purposes of issuing this advisory opinion.

12. The Court began deliberating this Judgment on May 28, 2018.

[8] Complementary briefs can be consulted on of the Court's website at the following link: http://www.corteidh.or.cr/cf/jurisprudencia2/observaciones_oc.cfm?nId_oc=1704

III.
JURISDICTION AND ADMISSIBILITY

A. General considerations

13. Article 64(1) of the American Convention marks one of the aspects of the advisory function of the Inter-American Court, by establishing that:

> The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.

14. The consultation submitted to the Court by the requesting State is covered by the aforementioned Article 64(1) of the Convention. Ecuador is a member state of the OAS and, is therefore authorized, under the Convention, to request an advisory opinion from the Inter- American Court.

15. The central purpose of this advisory function is that the Inter-American Court issue an opinion regarding the interpretation of the American Convention or other treaties concerning the protection of human rights in the American States, thereby establishing the scope of its competence. Along these lines, the Court has found that, where it refers to the Court's power to issue an opinion on "other treaties concerning the protection of human rights in the American States," Article 64(1) of the Convention is broad and not restrictive[9] (*infra* para. 38).

16. Similarly, articles 70[10] and 71[11] of the Rules of Procedure regulate the formal requirements that must be verified for an application to be considered by the Court. Basically, they impose the following requirements on the requesting State or body: i) state with precision the specific questions; ii) identify the provisions to be interpreted; iii) identify the considerations giving rise to the request, and iv) the names and addresses of the Agent.

17. To this effect, it is worth noting that, given that Article 73 of the Rules of Procedure of this Court[12], which stipulates the procedure to be followed in the advisory sphere, does not contain

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[9] *Cf.* Cf. *"Other treaties" subject to the consultative jurisdiction of the Court* (Article 64 of the American Convention on Human Rights) Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1, first opinion paragraph, *Gender Identity, Equality, and Non-Discrimination of Same-Sex Couples State obligations concerning change of name, gender identity, and rights derived from a relationship between same-sex couples (interpretation and scope of articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to article 1, of the American Convention on Human Rights)* Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 17.

[10] Article 70 of the Court's Rules of Procedure provides: "Interpretation of the Convention: 1. Requests for an advisory opinion under Article 64(1) of the Convention shall state with precision the specific questions on which the opinion of the Court is being sought. 2. Requests for an advisory opinion submitted by a Member State or by the Commission shall, in addition, identify the provisions to be interpreted, the considerations giving rise to the request, and the names and addresses of the Agent or the Delegates.[…]"

[11] Article 71 of the Court's Rules of Procedure provides: "Interpretation of other treaties: 1. If, as provided for in Article 64(1) of the Convention, the interpretation requested refers to other treaties concerning the protection of human rights in the American States, the request shall indicate the name of the treaty and parties thereto, the specific questions on which the opinion of the Court is being sought, and the considerations giving rise to the request […]".

[12] The aforementioned article states: "Procedure: 1. Upon receipt of a request for an advisory opinion, the Secretary shall transmit copies thereof to all of the Member States, the Commission, the Permanent Council through its Presidency, the Secretary General, and, if applicable, to the OAS organs whose sphere of competence is referred to in the request. 2. The Presidency shall establish a time limit for the filing of written comments by the interested parties. 3. The Presidency may invite or authorize any interested party to submit a written opinion on the issues covered by the request. If the request is governed by Article 64(2) of the Convention, the Presidency may do so after prior consultation with the Agent. 4. At the conclusion of the written proceedings, the Court shall decide whether oral proceedings should take place and shall establish

specific provisions related to an instance of admissibility, the Court has the power not to continue processing an application at any stage of the procedure, and even to decide not to address the application at the time of issuing its own opinion. Specifically, on two occasions, the Court decided not to respond to the consultation despite followed the regulatory procedure.[13]

18. On this matter, the Court recalls that, on numerous occasions, it has established that compliance with the regulatory requirements to submit a request for an advisory opinion does not mean that the Court is obliged to respond to it.[14] In deciding whether to accept or reject a request, the Court must take account of a number of equally important considerations that go beyond mere formalities related to its job of rendering an advisory opinion.[15]

19. This broad discretionary power cannot, however, be confused with a simple discretionary power of whether or not to issue the requested opinion. In order to refrain from responding to a consultation that is proposed to it, the Court must have determinants derived from the circumstance that the petition exceeds the limits that the Convention establishes for its jurisdiction in this area. For everything else, any decision by which the Court considers that it should not respond to a request for an advisory opinion must have reasons, as required by Article 66 of the Convention.[16]

20. During the procedure related to this request for an advisory opinion, several written and oral observations provided a variety of considerations as to the Court's jurisdiction to issue this advisory opinion, as well as the admissibility and validity of the questions formulated. In particular, some

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the date for a hearing, unless it delegates the latter task to the Presidency. Prior consultation with the Agent is required in cases governed by Article 64(2) of the Convention."

13 One of these requests was submitted by Costa Rica on February 22, 1991 for the purpose of conducting a compatibility study of a bill to amend two articles of the Code of Criminal Procedures and to create the Superior Court of Criminal Cassation, which was being processed with its Legislative Assembly, and article 8(2)(h) of said Convention. The Court decided not to respond to the request because it considered that, if it did, it could result surreptitious solution, through the advisory opinion of some cases being processed before the Commission based on the alleged violation by that State of article 8(2)(h) of the Convention. However, the Court did end up processing the request, received observations, and subsequently issued a negative decision. *Cf*. *Compatibility of a bill with Article 8(2)(h) of the American Convention on Human Rights*. Advisory Opinion OC-12/91 of December 6, 1991. Series A No. 12. Additionally, on April 20, 2004, the Inter-American Commission submitted a request on compatibility with the American Convention when it came to legislative or other measures that deny access to remedies to persons sentenced to death. Some of the States and organizations that submitted observations to the request opposed its admissibility, considering that the Court was ruling surreptitiously on a contentious case. After receiving observations, the Court decided to make use of its power not to respond to the consultation, considering that it had already ruled and issued an opinion on the matters included in the Commission's consultation, in its findings related to imposition of the death penalty and its execution, both in contentious cases and provisional measures, as well as in advisory opinions. *Cf*. *Request for an Advisory Opinion presented by the Inter-American Commission on Human Rights*. Order of the Inter-American Court of Human Rights of June 24, 2005.

14 *Cf. The right to information on consular assistance within the framework of the guarantees of due process of law.* Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 31; *Rights and guarantees of children in the context of Immigration and/or in need of international protection*. Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, para. 25; *Entitlement of legal entities to hold rights under the inter-American human rights system (Interpretation and scope of article 1(2), in relation to articles 1(1), 8, 11(2), 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62(3) of the American Convention on Human Rights, as well as of article 8(1)(a) and (b) of the Protocol of San Salvador).* Advisory Opinion OC-22/16 of February 26, 2016. Series A No. 22, para. 21, and Advisory Opinion OC-24/17, *supra,* para. 20.

15 *Cf*. Advisory Opinion OC-1/82, *supra,* para. 25; *Reports of the Inter-American Commission on Human Rights (Art. 51 American Convention on Human Rights)*. Advisory Opinion OC-15/97 of November 14, 1997. Series A No. 15, para. 39; *Legal Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 19; *Juridical Conditions and Rights of Undocumented Migrants.* Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 50; *Control of Due Process in the Exercise of the Powers of the Inter-American Commission on Human Rights* (Arts. 41 and 44 to 51 of the American Convention on Human Rights). Advisory Opinion OC-19/05 of November 28, 2005. Series A No. 19, para. 17; *Article 55 of the American Convention on Human Rights.* Advisory Opinion OC-20/09 of September 29, 2009. Series A No. 20, para. 14, and *The Environment and Human Rights (State Obligations in relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) in relation to Articles 1(1) and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 20, and Advisory Opinion OC-24/17, *supra,* para. 20.

16 *Cf.* Advisory Opinion OC-1/82, *supra,* para. 30.

comments warned about the scope of the Court's personal jurisdiction in relation to the questions that refer to the obligations of third party States outside the inter-American system for the protection of human rights. Additionally, several observations highlighted the fact that the request sought to respond to specific events of a political nature. Likewise, some observations considered that certain questions formulated by Ecuador would not comply with the admissibility requirements set forth in Articles 70 and 71 of the Rules of Procedure of the Inter-American Court, inasmuch as they would not adequately specify the conventional legal provisions or those of other relevant treaties, where interpretation would be required, and/or would place factual conditions for the Court's response.[17] In particular, regarding one of the questions (letter "d"), it was argued that, while moral postulates do illuminate legal norms, "statements of ethical and legal value such as the laws of humanity, the dictates of public conscience, and universal morality" do not emanate from any international instrument, nor would they be justiciable legal postulates in and of themselves.[18] Beyond these objections, it was highlighted that if the Inter-American Court were to address the central issues underlying the request, specifically the right to seek and receive asylum, the advisory opinion it issued could make a positive contribution to the protection of human rights in the region.

21. In this regard, the Court recalls that, as a body with jurisdictional and advisory functions, it has the power inherent to its duties to determine the scope of its own jurisdiction (*compete de la compétence / Kompetenz-Kompetenz*), also in the framework of the exercise of its advisory function, in accordance with Article 64(1) of the Convention.[19] This comes especially given the basic fact that doing so assumes recognition by the State or States that make the consultation as to the Court's power to rule on the scope of its jurisdiction in this regard.

22. However, the Court notes that the consultation submitted by the State of Ecuador has the following characteristics: i) only questions "a" and "g" specify the legal provisions to be analyzed; ii) contains questions related to the interpretation of different legal provisions that involve various regional and international instruments;[20] iii) all the questions include assumptions and factual conditions, although no specific mention is made of any specific controversy or dispute that the requesting State may have in the domestic or international arena; iv) questions "b" and "c" refer, as a factual assumption of the consultation, to "a State that is not a signatory to a certain convention on asylum" or to "a State that belongs to a regional legal regime different from that in which basis for which asylum was granted," and v) question "d" is formulated in vague and abstract terms.

23. Therefore, taking into account the previously outlined criteria, the questions formulated by the requesting State will be examined below, for which the pertinent considerations will be made, in the following order: a) the formal requirement to specify the provisions to be interpreted; b) personal jurisdiction; c) jurisdiction over the regional and international instruments involved; d) the validity

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17 Written observations submitted by Mexico; Law School of the EAFIT Medellín University; Tijuana Law School of the Autonomous University of Baja California; José Simeón Cañas Central American University; University College London "Public International Law Pro Bono Project"; Human Rights Center of the Andrés Bello Catholic University, and Faculty of Legal and Social Sciences of the Rafael Landívar University.

18 Written observations submitted by Mexico.

19 *Cf. Case of the Constitutional Court v. Peru. Jurisdiction.* Judgment of September 24, 1999. Series C No. 55, para. 33, and Advisory Opinion OC-24/17, *supra,* para. 15.

20 In fact, the request for an advisory opinion presented by the State of Ecuador contains questions regarding the interpretation of different legal provisions that involve the following regional and international instruments: American Convention on Human Rights (articles 5, 7, 8, 22(7), 29); the American Declaration of the Rights and Duties of Man (Article XXVII); Universal Declaration of Human Rights (articles 7, 13, 14.1, 28, 30); Convention on the Status of Refugees, of 1951 (articles 5, 33); Protocol on the Status of Refugees, of 1967; Declaration on Territorial Asylum, adopted by the UN General Assembly in its Resolution 2312 (XXII), of December 14, 1967 (articles 1(1), 1(3), 2(1), 2(2), 3(1)); International Covenant on Civil and Political Rights (articles 2(1), 5(2), 7, 9, 10, 14, 26); Vienna Convention on the Law of Treaties (articles 31, 32); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Inter-American Convention on Extradition (article 4(4)); Inter-American Convention on Mutual Assistance in Criminal Matters (article 9(c)). Likewise, the consultation refers generically to the "Regional conventions on asylum and refuge."

of the advisory opinion request, and e) the formal requirement to formulate the questions precisely and the underlying legal interpretations of general interest.

B. The formal requirement to specify the provisions to be interpreted

24. The consultation submits seven specific questions to the consideration of the Court, seeking its opinion, and also provides the considerations that constitute grounds for consultation, and the name and address of its agents, and therefore, it has formally complied with the respective requirements.

25. As to the regulatory requirement referring to the need to specify the provisions to be interpreted, as previously noted, only two of the seven questions posed, which are those identified with the letters "a" and "g," include legal provisions to be interpreted (*supra* para. 22). Thus, the remaining five questions do not comply with the formal requirement of specifying the provisions to be interpreted (*supra* para. 16), making them inadmissible *prima facie*. However, it must go beyond the formalism that would prevent the Court from considering questions that have a juridical interest for the protection and promotion of human rights.[21] Along these lines, the Court notes that the questions identified with subparagraphs "b," "c," "e," and "f" make specific reference to asylum, refuge, or refugee status and non-refoulement. This makes it possible to understand that the nature of the questions raised shows them to be related to interpretation of the same provisions mentioned in the first question, namely, Articles 22(7) and 22(8) of the American Convention and XXVII of the American Declaration.

26. On the other hand, the Court considers that the question identified with literal "d" is inadmissible overall, given that, in addition to not complying with the requirement to identify specific legal provisions, it is a question formulated in vague and abstract terms, making it impossible to refer it to the interpretation of provisions of specific conventions, since it refers to "certain statements of ethical and legal value that include the laws of humanity, the dictates of public conscience, and universal morality" and "what should be the legal consequences arising from ignorance of said statements."

27. Additionally, regarding the question identified with letter "g," the Court notes that it is a complex question in that it encompasses certain issues that could be related to the provisions under interpretation and others that go beyond this connection. To this effect, the Court considers that, as drafted, question "g" includes two questions with different meanings, which can be clearly distinguished. On the one hand, reference is made to the scope of the "qualification right in favor of the receiving State" and "the possibility for a State to request judicial cooperation in criminal matters from the receiving State." On the other hand, the consultation addresses the consequences derived from non-compliance by "[a] State that has been the subject of a resolution or opinion of a multilateral mechanism belonging to the United Nations System," and, in particular, when said mechanism establishes that "the conduct of [that] State can be interpreted as disregard for the right of classification exercised by the receiving State." In view of this, it is the Court's opinion that the question referring to the legal value and the consequences of the decisions adopted under treaty bodies or special procedures of the universal system for the protection of human rights that establish international responsibility exceed the scope of this Court's subject matter jurisdiction, given that they are governed by their own regulatory framework and mandate, making the question not admissible. The remaining aspects may be the subject of this advisory opinion.

28. In short, the Court considers that the content of the questions raised is aimed mainly at interpreting asylum as a human right contemplated in the terms of Article 22(7) of the American

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[21] *Cf.* Advisory Opinion OC-1/82, *supra,* para. 25, y Advisory Opinion OC-24/17, *supra*, para. 20.

Convention and XXVII of the American Declaration, and the international obligations derived for States in cases of seeking protection at a diplomatic office.

C. Personal jurisdiction

29. However, with regard to "third party States," the Court notes that, even though questions "b" and "c" can be redirected to the interpretation of treaty provisions, they mention, as a factual assumption of the consultation, "a State, foreign to a certain convention on asylum" (questions "b" and "c"), or to "a State that has a regional legal regime different from that on the basis of which asylum was granted" (question " c").

30. On this matter, the Court recalls that the interpretations made under its advisory role involve OAS Member States that have signed either the OAS Charter, regardless of whether or not they have ratified the American Convention,[22] with a source that, by its very nature, also contributes, especially in a preventive manner, to achieving the effective respect and guarantee of human rights. In particular, it can provide guidance when deciding matters relating to its observance and to avoid possible violations thereof.[23] This means that the Court's advisory jurisdiction does not extend to the obligations that non-Member States of the inter-American system have to protect human rights, even when they are parties to the treaty that is being interpreted.[24]

31. To this extent, the aforementioned questions may be resolved by the Court on the understanding that they are limited to interpretations that are incumbent on States that may or may not be parties to the asylum conventions (hereinafter "Latin American conventions," "Inter-American conventions," or "regional conventions" on asylum), but that are part of the community of OAS member states. This comes owing to the general interest of the Court's advisory opinions, which is why their scope should not be restricted to specific States.[25]

32. Notwithstanding this, we cannot ignore that the very nature of the subject matter of this consultation implies the potential involvement of third party countries in international relations with an OAS Member State as a result of an asylum application, especially when it is of diplomatic or extraterritorial asylum, or in relation to their obligations derived from the principle of non-refoulement. However, the considerations that can be made in this document regarding third party States does not imply determining the scope of the obligations of States that are not part of the inter-American system for the protection of human rights, since this would go beyond the Court's jurisdiction; rather they are inscribed in the framework of the regional system itself, which certainly contributes to the development of international law. In short, it is applicable for the Court to determine the obligations of an American State vis-à-vis the other OAS Member States and the persons under its jurisdiction.

D. Jurisdiction over the regional and international instruments involved

33. However, with respect to the various international instruments referenced in the consultation, the Court considers it necessary to make certain clarifications on the scope of its jurisdiction in each case.

34. Regarding the American Convention, the Court has already established that its advisory duty allows it to interpret any norm of said treaty, without any part or aspect of said instrument being

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22 *Cf.* Advisory Opinion OC-18/03, *supra,* para. 60, and Advisory Opinion OC-22/16, *supra,* para. 25.

23 *Cf.* Advisory Opinion OC-21/14, *supra,* para. 31, and Advisory Opinion OC-24/17, *supra*, para. 27.

24 *Cf.* Advisory Opinion OC-1/82, *supra,* para. 21 and first operative paragraph.

25 *Cf.* Advisory Opinion OC-16/99, *supra,* para. 41, and Advisory Opinion OC-23/17, *supra,* para. 35.

excluded from the scope of interpretation. To this effect, it is evident that, since the Court is the "ultimate interpreter of the American Convention," it has full authority and jurisdiction to interpret all the provisions of the Convention, even those of a procedural nature.[26]

35. In addition, Article 64(1) of the American Convention authorizes the Court to render advisory opinions interpreting the American Declaration, within the scope and framework of its jurisdiction in relation to the OAS Charter (hereinafter, "the Charter") and the Convention or other treaties concerning the protection of human rights in the American states.[27] Therefore, when interpreting the Convention within the framework of its advisory function, the Court is empowered to refer to the American Declaration when appropriate and in the terms of Article 29(d) of the Convention.

36. The Court has already underscored that, in the American Convention, there is an underlying tendency to integrate the regional system and the universal system for the protection of human rights. In fact, the preamble expressly recognizes that the principles that serve as the basis for that treaty have also been enshrined in the Universal Declaration of Human Rights and that "they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope." Similarly, several provisions of the Convention refer to other international conventions or international law, without restricting them to the regional sphere, such as Article 22 itself. Indeed, as will be further addressed below, the Convention itself, like the American Declaration, makes an express reference to other international agreements (*infra* para. 139). Likewise, when comparing the terms of Article 29, which contains the norms for the interpretation of the Convention, the Court has affirmed that its wording "is opposed, in quite clear terms, to restricting the system of protection of human rights based on the source of the obligations that the State has assumed in this matter."[28]

37. To this extent, as has previously been done,[29] the Court understands that the Universal Declaration of Human Rights can be useful for the exercise of the advisory function, in the terms of Article 29(d) of the American Convention, insofar as it establishes certain principles common to nations and having universal value. In this sense, the Court notes that it has been opportunely affirmed that the Universal Declaration "states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family."[30]

38. Along these lines, the Court has found that, where it refers to the Court's power to issue an opinion on "other treaties concerning the protection of human rights in the American States," Article 64(1) of the Convention is broad and not restrictive. To this effect, it has affirmed that:

> [...] the advisory jurisdiction of the Court can be exercised, in general, with regard to any provision dealing with the protection of human rights set forth in any international treaty applicable in the American States, regardless of whether it be bilateral or multilateral, whatever be the principal purpose of such a treaty, and whether or not non-Member States of the inter-American system are or have the right to become parties thereto.[31]

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26 *Cf.* Advisory Opinion OC-20/09, *supra,* para. 18, and Advisory Opinion OC-23/17, *supra*, para. 16.

27 *Cf. Interpretation of the American Declaration of the Rights and Duties of Man in the Framework of Article 64 of the American Convention on Human Rights.* Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, first and only operative paragraph.

28 Advisory Opinion OC-1/82, *supra*, para. 42.

29 The Court has already ruled on the Universal Declaration of Human Rights in the framework of its advisory role in *Legal status and rights of undocumented migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 55.

30 *Proclamation of Tehran*, Proclaimed by the International Conference on Human Rights in Tehran on May 13, 1968, UN Doc. A/CONF.32/41 p. (1968), Point 2.

31 Advisory Opinion OC-1/82, *supra,* first operative paragraph, and Advisory Opinion OC-24/17, *supra,* para. 17.

39. Therefore, the Court will now examine whether the other international treaties invoked by Ecuador can be classified as "other treaties concerning the protection of human rights in the American States," under the terms of Article 64(1) of the Convention.

40. The International Covenant on Civil and Political Rights,[32] as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[33] (hereinafter the "Convention against Torture"), are treaties adopted under the orbit of the United Nations that concern the protection of human rights and that are applicable to the American States. Indeed, by way of example, it is pertinent to note that the Court has already ruled on the International Pact in the framework of its advisory function in *Advisory Opinion OC-16/99*[34] and *Advisory Opinion OC-18/03.*[35]

41. Although the Convention relating to the Status of Refugees (hereinafter the "1951 Convention"), adopted in Geneva in 1951, and its Protocol, adopted in New York in 1967 (hereinafter "1967 Protocol"), did not constitute in their origin human rights treaties in *stricto sensu,* it is not possible to ignore that its main purpose is to protect the human rights of people when said protection is not available in their countries of origin. Likewise, it is pertinent to highlight the interaction that these instruments perform with the regimes for the protection of human rights. According to the terms of its preamble, the purpose of the Convention on the Status of Refugees is to guarantee international protection through recognition of the right to asylum, as well as to ensure refugees "the widest possible exercise of fundamental rights and freedoms." Likewise, that same subject matter is contained in the 1967 Protocol, insofar as it extends the geographical and temporal scope initially provided for by the 1951 Convention. Both the 1951 Convention[36] and the 1967 Protocol[37] were ratified by 28 and 29 OAS member states, respectively.

42. In this sense, The Court understands that, although they are international treaties of a special nature, insofar as they address the international protection of asylum seekers and refugees, an integrating vision, such as that postulated by the American Convention itself (*supra* para. 36) and the one adopted by this Court in *Advisory Opinion OC-21/14,*[38] provides for an understanding of international protection from a human rights perspective, without ignoring the value of the specialty. In the regional system, due to both its historical roots and the development of the legal tradition of inter-American law, said connection is undeniable. In particular, the Court notes that the inter-

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[32] The following 31 OAS Member States are parties to this treaty adopted on December 16, 1966, which went into force on March 23, 1976: Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Ecuador, El Salvador, United States of America, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama , Paraguay, Peru, Dominican Republic, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.

[33] The following 25 OAS Member States are party to this treaty adopted on December 10, 1984, which went into force on June 26, 1987: Antigua and Barbuda, Argentina, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, United States of America, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Republic Dominican Republic, Saint Vincent and the Grenadines, Uruguay, and Venezuela.

[34] *Cf.* Advisory Opinion OC-16/99, *supra,* para. 109.

[35] *Cf.* Advisory Opinion OC-18/03, *supra,* para. 55.

[36] The Convention on the Status of Refugees, adopted in Geneva on July 28, 1951, which went into force on April 22, 1954. The following 28 OAS Member States are party to this treaty: Antigua and Barbuda, Argentina, Bahamas, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru , Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, and Uruguay.

[37] The Protocol on the Status of Refugees, adopted in New York on January 31, 1967, which went into force on October 4, 1967. The following 29 OAS Member States are party to this protocol: Antigua and Barbuda, Argentina, Bahamas, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Ecuador, El Salvador, United States of America, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay , Peru, Dominican Republic, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela. The States that have not ratified or acceded to the 1951 Convention or its Protocol are: Barbados, Cuba, Grenada, Guyana, and Saint Lucia. In other words, all the Latin American States are Parties to the Protocol, with the exception of Cuba.

[38] *Cf.* Advisory Opinion OC-21/14, *supra,* para. 58 to 60.

American instruments recognize the right to seek and receive asylum, as well as the principle of non-refoulement. For its part, the refugee protection regime cannot be separated from human rights, in such a way that, parallel to the process of international positivization and the progressive interpretative development of supervision mechanisms, international protection has been imbued with a human rights approach. As an example, it is possible to highlight the incorporation of due process guarantees in the procedures for determining refugee status. It is along these lines that the Court understands that both treaties concern the protection of human rights in the American States and that, for this reason, they are within its sphere of competence.

43. Regarding the Inter-American Convention on Extradition, adopted in Caracas in 1981, and the Inter-American Convention on Mutual Assistance in Criminal Matters, adopted in Nassau in 1992, the instant request for an advisory opinion refers to the interpretation of the provisions contained in their respective articles 4(4) and 9(c). The Inter-American Convention on Extradition is a multilateral treaty of the inter-American system, whose purpose is to "strengthen international cooperation in legal and criminal law matters" and "extension of extradition to ensure that crime does not go unpunished, and to simplify procedures and promote mutual assistance in the field of criminal law." For its part, the Inter-American Convention on Mutual Assistance in Criminal Matters is also a multilateral treaty of the inter-American system, whose purpose is to contribute to the purpose of "seek[ing] the solution of political, juridical, and economic problems that may arise among [OAS member states]."[39] Thus, the main purpose of both regional treaties is not the protection of human rights, even though the preamble to the Inter-American Convention on Extradition states that its purpose will be carried out "with due respect to the human rights embodied in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights." Notwithstanding this, the Court notes that both provisions, insofar as they deal with the scope of extradition, can be related to the interpretation that this Court has to make regarding the protection derived from the right to seek and receive asylum and from the principle of non-refoulement and it is, therefore, to that extent that it will consider said provisions.

44. Finally, as regards "the inter-American conventions on asylum" and the Declaration on Territorial Asylum, adopted by the General Assembly of the United Nations on December 14, 1967, the Court finds that these international instruments of varied content and legal effects can serve as guide for interpreting[40] of article 22(7), and therefore may be taken into account as part of the *corpus juris* on international asylum.

45. In conclusion, the Court considers that it is empowered to rule in its advisory sphere on all international instruments brought for consultation by the State of Ecuador, insofar as they concern the protection of human rights in the American States, for which reason they fall within the sphere of the Court's jurisdiction, as well as under the reference made by Article 22 of the Convention to international conventions (*supra* para. 36 e *infra* para. 142).

E. Validity of the advisory opinion request

46. In addition to the formal requirements established in the Convention and the Regulations, the Inter-American Court has issued criteria in case law regarding the validity and admissibility of processing or responding to a request for an advisory opinion. In particular, in its case law, the Court has issued[41] certain assumptions that, if verified, could lead to the use of the power not to process or not respond to the request. Thus, the Court has mentioned that a request: a) must not be a

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39 Preamble to the Inter-American Convention on Mutual Assistance in Criminal Matters.

40 *Cf.* Advisory Opinion OC-21/14, *supra,* para. 60, and Advisory Opinion OC-24/17, *supra*, para. 60.

41 *Cf. Request for an Advisory Opinion presented by the Secretary General of the Organization of American States*. Order of the Inter-American Court of Human Rights dated June 23, 2016, Sixth whereas clause.

contentious case in disguise[42] or attempt to prematurely obtain a determination on an issue that might eventually be put to the Court as part of a contentious case[43]; b) should not be used as a mechanism to obtain an indirect determination of a matter in dispute or in controversy at the domestic level[44]; c) should not be used as an instrument of domestic political squabbles[45]; d) it should not exclusively address issues on which the Court has already ruled in its case law,[46] and e) not seek to resolve questions of fact, but to determine the meaning, purpose and reason of international human rights norms to assist Member States and OAS bodies to fulfill their international commitments both fully and effectively.[47] However, the criteria set out are not an exhaustive list, nor do they constitute insurmountable limits, as it is up to the Court to assess the relevance of exercising its advisory function for each specific request.

47. In addition, the Court's advisory jurisdiction should not, in principle, be used for purely academic speculation, without a foreseeable application to concrete situations justifying the need for an advisory opinion.[48] In short, it is up to the Court to balance the legitimate interests of the requesting party with the general objectives served by the advisory function.

48. As mentioned, some observations presented during the procedure considered that this request for an advisory opinion would be inadmissible due to its alleged relationship with a specific factual situation in which the State of Ecuador finds itself, even when said scenario was not mentioned by the requesting State (*supra* paras. 20 and 22). In particular, they referred to the case of Julian Assange, founder of Wikileaks, who in 2012 obtained asylum in the Ecuadorian embassy in the United Kingdom and has remained there ever since.

49. Thus, it is up to the Court to examine, among other things, whether it is intended to make improper use of its advisory function to resolve contentious matters.[49] To resolve on the question of whether this matter of fact could, in and of itself, lead the Court to not decide on it, we must first recap its position on the subject matter.

50. The Court recalls that, according to its case law, the mere fact that there are contentious cases related to the matter brought for consultation, or petitions before the Inter-American Commission, or proceedings before the International Court of Justice, is not enough for this Court to abstain from answering the questions submitted for consultation, due to its nature as an autonomous

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[42] *Cf.* Advisory Opinion OC-12/91, *supra,* para. 28, and Advisory Opinion OC-16/99, *supra,* para. 46 and 47, and Request for an Advisory Opinion presented by the Inter-American Commission on Human Rights. Order of the Inter-American Court of Human Rights of June 24, 2005, fifth whereas clause.

[43] *Cf.* Advisory Opinion OC-16/99, *supra,* para. 45, and Request for an Advisory Opinion presented by the Inter-American Commission on Human Rights. Order of the Inter-American Court of Human Rights dated June 24, 2005, Sixth whereas clause.

[44] *Cf.* Request for an Advisory Opinion presented by the Republic of Costa Rica. Order of the Inter-American Court of Human Rights of May 10, 2005, thirteenth whereas clause.

[45] *Cf. Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica.* Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 30, and Request for an Advisory Opinion presented by the Republic of Costa Rica. Order of the Inter-American Court of Human Rights of May 10, 2005, eleventh whereas clause.

[46] *Cf.* Request for an Advisory Opinion presented by the Inter-American Commission on Human Rights. Order of the Inter-American Court of Human Rights of June 24, 2005, seven to twelfth whereas clauses, and Request for an Advisory Opinion presented by the Inter-American Commission on Human Rights. Order of the Inter-American Court of Human Rights of January 27, 2009, seventh and fifteenth whereas clauses.

[47] *Cf.* Advisory Opinion OC-16/99, *supra,* para. 47, and Advisory Opinion OC-18/03, *supra,* para. 63, and Advisory Opinion OC-24/17, *supra,* para. 22.

[48] *Cf. Judicial Guarantees in States of Emergency* (arts. 27(2), 25, and 8 of the American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 16, and Advisory Opinion OC-24/17, *supra*, para. 20.

[49] *Cf.* Advisory Opinion OC-12/91, *supra,* para. 28, and Advisory Opinion OC-18/03, *supra,* para. 62.

judicial institution.[50] The advisory work that the Court must undertake as part of its advisory function differs from its contentious jurisdiction in that there is no dispute to be settled.[51] The central purpose of the advisory function is to obtain a judicial interpretation of one or several provisions embodied in the Convention, or of other treaties concerning the protection of human rights in the American States.[52]

51. On the other hand, as the Court has already mentioned, its advisory jurisdiction should not, in principle, be used for purely academic speculation, without a foreseeable application to concrete situations justifying the need for an advisory opinion (*supra* para. 47). Thus, its use of examples places the request in a particular context and illustrates the differences as to the interpretation that might be given of the legal issue raised in the instant consultation, without the Court having to rule on those examples.[53] In addition, the use of the latter allows the Court to show that its Advisory Opinion is not mere academic speculation, and is warranted by the benefit it might have for international protection of human rights.[54] In addressing the issue, the Court is acting in its role as a human rights tribunal, guided by the international instruments that govern its advisory jurisdiction, and it conducts a strictly juridical analysis of the questions posed to it.[55]

52. In summary, the Court has understood that, although it must not lose sight of the fact that its advisory function essentially implies the exercise of an interpretative power, the consultations must have a practical scope and predictability of application; at the same time that they must not be limited to an extremely precise factual assumption that makes it difficult to separate it from a decision on a specific case, which would be detrimental to the general interest that a consultation could provoke.[56] Ultimately, this requires a delicate exercise of judicial appreciation in order to discern the substantial purpose of the request, which can reach claims of general validity and transcend all American States, beyond the reasons that may have given rise to it or reference made to particular facts.

53. In particular, the Court notes that no case has been reported before the inter-American system regarding the issues submitted for consultation. Consequently, the Court considers that, without deciding on any specific issue that may have been mentioned in the processing of this advisory proceeding, it may analyze the underlying material subject matter of the instant request in efforts to address the general interest in the Court's deciding on a significant legal subject matter having a regional scope, which is the right to seek out and receive asylum. To this effect, the response to the instant request for an advisory opinion, through the interpretation of relevant legal orders, makes it possible to clarify and specify the scope and content of the right to seek out and receive asylum in the framework of the inter-American system, as well as the obligations of OAS Member States as to the persons subject to their jurisdiction that are seeking out international protection for different reasons and, ultimately, contribute to the development of international human rights law.

F. The formal requirement to ask precise questions and legal interpretations with underlying general interest

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50 *Cf.* Advisory Opinion OC-16/99, *supra,* para. 45 to 65; Advisory Opinion OC-18/03, *supra,* paras. 62 to 66; Advisory Opinion OC-23/17, *supra,* para. 26, and Advisory Opinion OC-24/17, *supra,* para. 24.

51 *Cf.* Advisory Opinion OC-15/97, *supra,* para. 25 and 26, and Advisory Opinion OC-24/17, *supra,* para. 54.

52 *Cf. Restrictions on the Death Penalty (arts. 4(2), and 4(4) of the American Convention on Human Rights).* Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, para. 22, and Advisory Opinion OC-24/17, *supra,* para. 54.

53 *Cf.* Advisory Opinion OC-16/99, *supra,* para. 49, and Advisory Opinion OC-23/17, *supra,* para. 27.

54 *Cf.* Advisory Opinion OC-16/99, *supra,* para. 49, and Advisory Opinion OC-18/03, *supra,* para. 65.

55 *Cf.* Advisory Opinion OC-17/02, *supra,* para. 35, and Advisory Opinion OC-24/17, *supra*, para. 60.

56 *Cf.* Advisory Opinion OC-16/99, *supra,* para. 38 to 41.

54. As already stated, the burden of stating the questions precisely falls on the requesting State (*supra* para. 16). The Court notes that all the questions asked by Ecuador contain factual assumptions, insofar as they refer to a certain State action as a condition for this Court to determine whether or not such action is in accordance with the international regulatory framework, as well as the "legal consequences" that should be derived therefrom. In this regard, it is necessary to remember that, in the exercise of its advisory function, the Court is not called upon to resolve questions of fact, but to determine the meaning, purpose, and reason of international human rights norms.[57] In this way, the advisory function constitutes "a service that the Court is able to provide to all the members of the inter-American system to comply fully and effectively with their relevant international obligations" on human rights.[58] Therefore, responding to the request in the terms formulated by Ecuador would distort the purposes of the advisory function, " since the questions it posed did not turn solely on legal issues or treaty interpretation; that State's position was that a response to the request required that facts in specific cases be determined."[59]

55. Along these lines, the Court recalls that it is not necessarily bound by the literal terms of the consultations that are presented to it. Thus, in exercise of its powers inherent to the competence granted by Article 64 of the Convention, it may have to specify or clarify and, in certain cases, reformulate the questions that are posed, in order to clearly determine the material purpose of its interpretive efforts. This involves examining whether it is possible to redirect the question or questions submitted for interpretation of the American Convention or other treaties concerning the protection of human rights in the American States, with the requirement to provide an effective guide for the States.

56. Therefore, for a more effective exercise of its advisory function, and taking into account that this essentially consists of interpreting and applying the American Convention or other treaties over which it has jurisdiction, the Court deems it pertinent to reformulate the questions that fall within its advisory jurisdiction in general and encompassing terms based on relevant legal provisions, as indicated below:

a) Taking into account the principles of equality and non-discrimination (set out in articles 2(1), 5, and 26 of the International Covenant on Civil and Political Rights), the *pro person* principle and the obligation to respect human rights, as well as articles 31 and 32 of the Vienna Convention on the Law of Treaties, article 29 of the American Convention on Human Rights, articles 28 and 30 of the Universal Declaration of Human Rights, and Article 5 of the Geneva Convention on the Status of Refugees, is it possible to understand that Article 22(7) of the American Convention and Article XXVII of the American Declaration protect the human right to seek and receive asylum under the different modalities, forms, or categories of asylum developed in international law (including diplomatic asylum), according toArticle 14(1) of the Universal Declaration of Human Rights, the 1951 Geneva Convention on the Status of Refugees, and its 1967 New York Protocol, as well as the regional conventions on asylum and the norms pertaining to the domestic order of OAS member states?

b) What are the international obligations derived from the American Convention and the American Declaration in a situation of diplomatic asylum for the receiving State?

57. In conclusion, the Court emphasizes that these two questions essentially comprise the most substantial questions initially formulated by Ecuador.

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[57] *Cf. International responsibility for the promulgation and enforcement of laws in violation of the Convention* (arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 23, and Advisory Opinion OC-24/17, *supra,* para. 22.

[58] *Cf.* Advisory Opinion OC-1/82, *supra,* para. 39, and Advisory Opinion OC-24/17, *supra*, para. 22.

[59] Advisory Opinion OC-16/99, *supra,* para. 46.

58. Furthermore, the Court deems it necessary to recall that, according to international law, when a State is party to an international treaty, such as the American Convention, said treaty is binding for all of its organs, including the Judiciary and the Legislature,[60] so that a violation by any of these organs gives rise to the international responsibility of the State.[61] Accordingly, the Court considers that the different organs of the State must carry out the corresponding conventionality control,[62] which must be based also on the considerations of the Court in the exercise of its non-contentious or advisory jurisdiction. Both, the non-contentious and the contentious jurisdiction undeniably share the same goal of the Inter-American human rights system, which is "the protection of the fundamental rights of the human being."[63]

59. Furthermore, the interpretation given to a provision of the Convention[64] through an advisory opinion provides to all the organs of the OAS Member States, including those that are not parties to the Convention but that have undertaken to respect human rights under the Charter of the OAS (Article 3(l)) and the Inter-American Democratic Charter (Articles 3, 7, 8 and 9) with a source that, by its very nature, also contributes, especially in a preventive manner, to achieving the effective respect and guarantee of human rights. In particular, it can provide guidance when deciding matters relating to the respect and guarantee of human rights in the context of international protection to avoid possible human rights violations.[65]

60. This Court recalls the inherent power to structure its decisions in the way it deems most appropriate to the interests of law and for the purposes of an advisory opinion. Taking into account the above, in order to adequately answer the two questions expressed *supra*, the Court has decided to structure this opinion in two chapters. First, the Court will address the issue of the right to asylum and its scope as a human right in the inter-American system to, later, determine the state obligations associated with a situation of diplomatic asylum.

IV
THE RIGHT TO SEEK AND RECEIVE ASYLUM IN ACCORDANCE WITH ARTICLES 22(7) OF THE AMERICAN CONVENTION ON HUMAN RIGHTS AND XXVII OF THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

61. In this chapter, the Court will interpret Articles 22(7) of the American Convention and XXVII of the American Declaration. To this end, the Court will first establish the classification of the asylum that it will use in this decision and, later, it will divide its analysis into the following sections: a) historical development of asylum; b) the nucleus of asylum as a legal concept and its particularities according to the modality; c) crystallization of asylum as a human right in international instruments; d) regulatory reception at the national level as to the various forms of asylum, and e) the human right to seek and receive asylum within the framework of the inter-American system.

62. The provisions the Court is called on to interpret in this advisory opinion are Article 22(7) of the American Convention and XXVII of the American Declaration, read jointly with Article 14 of the

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60 *Cf. Case of Fontevecchia and D`Amico v. Argentina. Merits, Reparations, and Costs.* Judgment of November 29, 2011. Series C No. 238, para. 93, and Advisory Opinion OC-24/17, *supra,* para. 26.

61 *Cf. Case of Velásquez-Rodríguez v. Honduras Merits.* Judgment of July 29, 1988. Series C No. 4, para. 164, and Advisory Opinion OC-24/17, *supra,* para. 26.

62 *Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 124, and Advisory Opinion OC-24/17, *supra,* para. 26.

63 *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights.* Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 29, and Advisory Opinion OC-24/17, *supra,* para. 26.

64 *Cf. Case of Gelman v. Uruguay Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights dated March 20, 2013, Whereas clauses 65 to 90, and Advisory Opinion OC-24/17, *supra*, .para*.* 27.

65 *Cf.* Advisory Opinion OC-21/14, *supra,* para. 31, and Advisory Opinion OC-24/17, *supra,* para. 27.

Universal Declaration of Human Rights, the Geneva Convention on the Statute of Refugees of 1951, and its New York Protocol of 1967, as well as with the Latin American conventions on asylum, and the norms pertaining to the internal order of the OAS member states.

63. The provisions of relevant inter-American laws establish the following:

> Article 22 of the American Convention. Freedom of Movement and Residence
> […]
> 7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes. […]
>
> Article XXVII of the American Declaration. Right of Asylum
> Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements.

64. As can be seen, the human right on which the Court will focus its interpretive work it is the "right of asylum," as it can be referred to in a general way, and its various regulatory components based on the abovementioned provisions. However, given that the term asylum constitutes an ambiguous concept both in national and international law as it expresses different meanings, the Court is called upon to interpret whether Article 22(7) of the Convention and Article XXVII of the Declaration cover the various types of asylum as a fundamental human right, namely, territorial asylum, refugee status, and diplomatic asylum, or whether, on the contrary, the right to asylum in said inter-American instruments is circumscribed to one or several of said figures.

65. For the Court, asylum is the guiding concept that includes all the institutions connected to the international protection of people forced to flee their country of nationality or habitual residence. As mentioned, the institution of asylum is manifested through various figures or modalities. For the purposes of this advisory opinion, the Court goes on to establish its understanding of the classification of asylum.

66. The *asylum in the strict sense or political asylum*[66] is the protection that a State offers to people who are not its nationals when their life, personal integrity, security, and/or freedom are or could be in danger, whether due to persecution for political or common crimes related thereto, or for political reasons. Asylum in the strict sense coincides with what is known as the "Latin American tradition of asylum" (*infra* paras. 78 to 93).

67. In turn, according to the place where protection is provided, asylum in the strict sense can be classified as:

> i) *territorial asylum*: consists of the protection that a State offers in its territory to nationals or habitual residents of another State where they are persecuted for political reasons, for their beliefs, opinions, or political affiliation, or for acts that can be considered to be political or related common crimes. Territorial asylum is intrinsically related to the prohibition of extradition for political or common crimes committed for political purposes.

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[66] The terminology "political asylum" was used in different Latin American conventions to refer to diplomatic asylum, while "political refuge" was adopted as a synonymous term for territorial asylum, despite the fact that all these institutes were granted for the benefit of persons persecuted for political or related crimes or for political reasons. To this effect, diplomatic asylum has also been called political asylum and territorial asylum has sometimes been called refuge or political refuge. This classification contributed to the confusion of terminology and the asylum-refuge dichotomy. For this reason, the Court considers that political asylum covers both territorial asylum and diplomatic asylum, and is called "political" because of the matter it seeks to protect, namely, persecution for political or related crimes, or for political reasons, regardless of the place in which it is granted (*infra* para. 88).

ii) diplomatic asylum: consists of the protection that a State offers in its embassies, warships, military airships and camps, to nationals or habitual residents of another State where they are persecuted for political reasons, for their beliefs, opinions, or political affiliation, or for acts that can be considered to be political or related common crimes.

68. *Asylum under refugee status, according to the traditional definition and the expanded regional definition of the Cartagena Declaration*[67] includes the protection of that person who has a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, and is outside of her or his country of origin and because of this fear is unable or unwilling to return to her or his country of origin; or a person who lacks a nationality and because of this, is outside of her or his former habitual residence, and is unable or, unwilling to return based on fear. The term "refugee" is also applicable to those who have fled their countries of origin because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights, or other circumstances which have seriously disturbed public order.

69. Taking into account the established classification, the point that the Court has to elucidate in this section is whether, based on the guidelines interpretive of international human rights law, is it possible to understand that Article 22(7) of the American Convention and Article XXVII of the American Declaration protect the human right to seek and receive asylum the different modalities, forms or categories of asylum developed in the international law, (including diplomatic asylum), in accordance with article 14(1) of the Universal Declaration of Human Rights, the Geneva Convention on the Status of Refugees of 1951, and its New York Protocol of 1967, as well as regional conventions on asylum, and the norms pertaining to the internal order of the OAS member states?

70. In short, the answer to this question will depend on the conclusions reached by this Court regarding the various interpretative questions that, according to what was discussed in these proceedings, generate the way in which the inter-American provisions were drafted in terms of the following: aspects: i) the meaning of the term asylum itself; ii) the factor "in foreign territory," and iii) the determining factor "according to the legislation of each country/State and with international agreements."

71. In order to undertake the interpretative work, the Court deems it pertinent, as a prelude, to show that asylum is a concept that has varied over time, deriving from similar institutions that existed throughout history, but at the same time acquired individual nuances individuals depending on the period. Asylum went from being a humanitarian institution to later acquiring a markedly religious character and, currently, to establishing itself as a recognized legal institution, with different scopes and nuances, both in international and in domestic law. From that moment on, asylum began to be codified in treaties of a purely interstate nature and, later, in human rights instruments. For this reason, the Court will refer to the definitiveness of the recognition of asylum as a human right in international instruments, both in the regional and universal spheres, to finally focus specifically on its interpretative function in the terms described *supra*. That relating to the scope of state obligations will be dealt with in the next chapter when answering the second question posed.

A. Historical development of asylum

A.1 Origins

[67] *Cf.* Convention relating to the Status of Refugees, *supra,* Article 1.A.2), and the Cartagena Declaration on Refugees, adopted by the "Colloquium on the International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems," held in Cartagena, Colombia, from November 19 to 22, 1984, which was sponsored by the Government of Colombia and cosponsored by the Law School of the University of Cartagena de Indias, the Regional Center for of the Third World and the United Nations High Commissioner for Refugees, Third conclusion. *See* also, Advisory Opinion OC-21/14, *supra*, para. 49(m).

72. Although it is difficult to establish with certainty the exact moment in which it appeared, according to some scholars, asylum has existed since ancient times among the Egyptians and the Hebrews through what were called "cities of refuge." Likewise, among the Greeks, there was a custom of granting protection to any person who took refuge in the sanctuaries, taking refuge in the sacred character of the places destined for worship (statues, altars, and temples of the gods). In this case, the guarantee of asylum was a matter of divine right, that is, it did not respond to legal or moral principles, nor to humanitarian feelings, but rather, to the superstitious fear of divine punishment in the event of violation of the enclosures where the protected persons were located. This type of asylum is known by scholars as "pagan asylum."

73. The modern etymology of the expression asylum comes from the Greek word *asylos*, which means "inviolable place." In Christianity, the practice of asylum began when the first temples of this faith were erected, at the time when it became the official religion of the Roman Empire. From then on, the inviolability of asylees came, first, from respect for the investiture of the priest who interceded on behalf of the persecuted persons, and then from the inviolability of the sacred character of the enclosure (churches, convents, cemeteries). Hence, canonical or ecclesiastical asylum was born.

74. Over time, the figure of ecclesiastical asylum lost strength. The appearance of various independent and sovereign States in Europe implied increased protection for individuals within the territory of the receiving State, for which territorial asylum began to gain more strength, thereby consolidating extradition for common criminals. The legal concept of asylum as we know it today has its origin in the French Revolution and the French Constitution of 1793, when asylum ceased to be a religious tradition, taking on a civil connotation with political content, closely linked to the concept of state sovereignty and the exercise of extradition. Likewise, the incompatibility of political ideals in the 19th century, stemming from national construction processes, gave rise to a large flow of migrations in Europe, where people sought protection. In this way, laws and treaties began to distinguish between common criminals and politicians, developing the notion of political asylum. However, despite the recognition of asylum in favor of the politically persecuted, which was derived from certain specific decisions to deny extradition to certain people in post-revolutionary Europe, this did not mean a progressive and vigorous development of the figure of asylum in the domestic jurisdictions of European countries, nor through international agreements.

A.2 Emergence and evolution of diplomatic asylum

75. Diplomatic or extraterritorial asylum appears with the birth of nation-states and the establishment of permanent diplomacy in Europe in the 15th and 16th centuries, when embassies came to be, alongside the granting of personal privileges to ambassadors, who from then on enjoyed rights including the inviolability of their properties (homes and means of transportation). Diplomatic asylum progressed at that time, while religious or ecclesiastical asylum declined, the latter being an antecedent of diplomatic asylum, due to the inviolability of sacred precincts, as explained above (*supra* para. 73). It is important to highlight that, after the Westphalian Congress of 1648 and the consequent consolidation of diplomacy between the European States of the 17th century, the need arose to establish certain rules regarding the immunity of the person of the ambassador, as well as the inviolability of their properties. Consequently, the ambassador's residence began to be guarded, and the diplomatic mission was consolidated as a safe place, completely isolated from the exercise of the jurisdiction of the receiving State. After overcoming the fiction of considering the missions to be territories of the country they represent, the inviolability of the diplomatic premises went from responding to a customary practice to being codified in the Vienna Convention on Diplomatic Relations.

76. Diplomatic asylum was initially granted to common criminals, where there was not only the inviolability of the missions and the ambassador's residence, but also of the entire neighborhood

where said residence was located (*franchise des quartiers or jus quateriorum).* However, this last concept ended in the 18th century due to the abuses committed in practice. The custom of the ambassadors to receive different people in their embassies soon led to conflicts of great magnitude relative to the scope of the prerogatives of the diplomatic mission. As a result, diplomatic asylum began to fall into disuse in Europe in the 19th century, consolidating the figure of extradition. On the other hand, diplomatic asylum for those accused of political crimes, despite resistance from territorial governments to recognize it, was granted in some European cases during the 19th and 20th centuries.

77. Despite the European decline of the institution due to greater political stability, in Latin America it was consolidated as a response to the never-ending crises of the incipient independence of the Latin American States. In this sense, although diplomatic asylum was born in Europe, later, due to the political situation, it was developed in the laws of Latin American countries, where the issue found a stronger drive, especially thanks to the creation of international treaties on the subject matter.

A.3 What is known as the "Latin American tradition of asylum" and non-extradition for political or related crimes

78. The development of territorial and diplomatic asylum in Latin American countries dates from the end of the 19th century, when, after obtaining their independence, States began to organize themselves politically and adopt bilateral or multilateral treaties to regulate asylum for the benefit of the politically persecuted, while establishing the rule of non-extradition in the case of persons who, according to the classification of the requested State, are persecuted for political crimes, or common crimes prosecuted for a political purpose or reason. Under this doctrine, the goal is to respect submitting those accused of common crimes to justice systems that operate under the rule of law and to avoid impunity while, on the other hand, not restricting revolutionary movements, self-determination, and freethinkers.

79. However, as Colombia pointed out in its arguments in the *Case of Asylum (Colombia v. Peru)* before the International Court of Justice, the institution of asylum in America was born as a result of the coexistence of two phenomena that derive from law and politics: on the one hand, the power of democratic principles, respect for the individual and freedom of thought; and on the other, the unusual frequency of revolutions and armed struggles that endangered the safety and lives of the people on the losing side.[68]

80. Thus, asylum was gradually regulated, generally as a result or reaction to interstate conflicts that arose as a result of specific events. In this first stage that marked what is known as the "Latin American tradition of asylum,"[69] asylum was incorporated into multilateral instruments in such a way that it was regulated as a right of the States that, making use of their sovereignty, granted protection to the people they considered appropriate.

81. An example of the above was the Treaty on International Criminal Law, which was signed by the plenipotentiaries of Argentina, Bolivia, Paraguay, Peru, and Uruguay in Montevideo on January 23, 1889, during the First South American Congress of International Private Law, which was adopted after two incidents related both to the diplomatic asylum of a Peruvian General in May 1865 at the U.S. embassy in Peru, and to the protection provided to a group of Peruvians granted asylum with

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[68] *Cf.* International Court of Justice (ICJ), Pleadings, Oral Arguments, Documents, *Case of Asylum (Colombia v. Peru),* vol. I, page 25, cited in the Report of the Secretary General of the United Nations Organization to the General Assembly on the *Question of Diplomatic Asylum*, September 22, 1975, Part II, para. 11.

[69] *Cf. Case of the Pacheco Tineo Family v. Bolivia. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 25, 2013. Series C No. 272, para. 137 and Advisory Opinion OC-21/14, *supra*, para. 74.

the acting charge d'affaires of France in Peru, which revealed the need to adopt certain rules of common understanding, but at the same time provide flexibility in the search for solutions.

82. Said multilateral instrument clearly established that extradition would be limited to political crimes, classifying as such, in terms of the second paragraph of article 23, those that the requesting nation considers based on the provisions of the law which shall prove to be most favorable to the accused. The aforementioned treaty also establishes the inviolability of asylum for persons prosecuted for political crimes (article 16) and regulates both territorial (articles 15 and 18) and diplomatic asylum (article 17). Regarding the latter, it also established that this fact must be brought to the attention of the territorial State, which may demand that the persecuted person be removed from national territory within the shortest time possible, for which it must provide the necessary guarantees. From the foregoing it can be inferred that if the person is accused of common crimes, said person must be handed over to the local authorities by the head of the legation. In addition, the asylee is required to behave in a manner that does not violate the public peace of the nation against which the offenses were committed.

83. On February 20, 1928, the Havana Convention on Asylum was adopted at the Sixth International Conference of American States, with the purpose of regulating the concept of diplomatic asylum.[70] It reiterates that persons accused or convicted of common crimes will not be able to benefit from diplomatic asylum, so they must be handed over to the authorities of the territorial State (article 1). As to persons prosecuted for political crimes, who may request asylum in the legations, this treaty establishes certain rules that will be applicable "to the extent in which allowed, as a right or through humanitarian toleration, by the usages, the conventions or the laws of the country in which asylum is granted" (article 2). These rules provide: i) asylum may not be granted except in urgent cases and for the period of time strictly indispensable for the person who has sought asylum to ensure in some other way his safety; ii) notification of the granting of asylum to the territorial state or state in which the crime was committed; iii) the power of the latter State to demand that the asylum seeker be removed from the national territory within the shortest possible time; iv) the power of the State receiving asylum to demand the necessary guarantees for the asylee to leave the country, and v) the prohibition for the asylum-seekers to practice acts contrary to public peace. Said treaty does not define what should be understood as a common or political crime, nor to which State the right of qualification corresponds.

84. Later, on December 26, 1933, the Montevideo Convention on Political Asylum was adopted,[71] which referred to the regulation of diplomatic asylum, which had the objective of modifying article 1 of the Havana Convention.[72] Likewise, this agreement specified that "the judgment of political delinquency concerns the State which offers asylum. (article 2)"

85. Subsequently, the Treaty on Asylum and Political Refuge of Montevideo was adopted on August 4, 1939.[73] This treaty, which regulates the two aspects of asylum, both territorial and diplomatic, was based on a project prepared by the Minister of Foreign Relations and Worship of the

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[70] This Convention, which entered into force on May 21, 1929, has 16 States Parties: Brazil, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, and Uruguay.

[71] This Convention, which entered into force on March 28, 1935, has 16 States Parties: Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, and the Dominican Republic.

[72] The Pan American Union Council American requested that the Institute of International Law prepare a project on diplomatic asylum for the Seventh International Conference of American States, which was adopted on December 26, 1933. The document was not signed by the United States of America, which expressly stated that its country did not recognize or subscribe to the asylum doctrine as part of international law.

[73] This Convention has 6 States Parties: Argentina, Bolivia, Chile, Paraguay, Peru, and Uruguay. The Treaty entered into force between the High Contracting Parties in the order in which they deposited their respective ratifications (Article 18).

Argentine Republic, due to the renewed interest in regulating the concept of asylum with greater precision and in connection to the civil war in Spain.[74] Although none of the treaties adopted had the intention of repealing the previous one, this treaty set out the objective of adopting a more robust and detailed regulation in order to give a normative response to new situations that had arisen,[75] noting that its scope of application was extended from protecting people persecuted for political or related common crimes, to protecting them and those persecuted for political reasons, a criterion that was preserved in the two Caracas Conventions of 1954. The treaty reiterates some previously regulated issues regarding diplomatic asylum, such as the fact that the names of the asylum seekers must be immediately communicated to the territorial state; that they will not be allowed to carry out acts that disturb public peace or that tend to participate or influence political activities, the violation of which will lead to the termination of asylum; that the territorial State may demand that the asylee be removed from the national territory in the shortest possible time, and that the State receiving asylum may, in turn, demand the necessary guarantees so that the asylee may leave the country. It adds that the receiving State "does not thereby incur an obligation to admit the refugees into its territory. (Article 1)" Likewise, it contains considerations on large numbers of refugees (article 8) and the case of severance of diplomatic relations (article 10), and provides that any disagreement will be resolved through diplomatic channels, arbitration or juridical decision a tribunal whose jurisdiction both parties recognize (Article 16).

86. Finally, the Conventions on Diplomatic Asylum[76] and Territorial Asylum[77] were both adopted on March 28, 1954 in Caracas. In particular, the Convention on Diplomatic Asylum was adopted following the judgment issued by the International Court of Justice on November 20, 1950, in the *Case of Asylum (Colombia/Peru)*, on the occasion of the asylum granted at the Colombian embassy in Peru to Mr. Víctor Raúl Haya de la Torre. The analysis of this case by the International Court of Justice exposed the lack of precise and concrete regulation on various aspects of diplomatic asylum, which, once again, led the Latin American States to regulate said institution. Indeed, a few months after the decision of the International Court of Justice, the Council of the Organization of American States adopted a resolution in which it declared that the right to asylum was a "legal principle of the Americas," contained in international conventions and was included as a fundamental right in the American Declaration.[78] Likewise, this resolution recommended that the Inter-American Juridical Committee give priority to the study of this issue, based on which it prepared two draft conventions on territorial and diplomatic asylum, which, after various modifications, were adopted in 1954.[79] These two instruments constitute the most comprehensive conventions on asylum in the Latin American region. The Convention on Territorial Asylum has been ratified by 12 States and the Convention on Diplomatic Asylum has been ratified by 14 States.

87. The Convention on Diplomatic Asylum maintains the position that it is a right of the State to grant asylum, so it is neither obliged to grant it nor to declare why it is denied.[80] On the other hand,

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[74] *Cf.* Report of the Secretary General of the United Nations Organization to the General Assembly on the *Question of Diplomatic Asylum*, September 22, 1975, Part II, para. 63.

[75] *Cf.* Report of the Secretary General of the United Nations Organization to the General Assembly on the *Question of Diplomatic Asylum*, September 22, 1975, Part II, para. 64.

[76] The Convention on Diplomatic Asylum, which entered into force on December 29, 1954, has 14 States Parties: Argentina, Brazil, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Panama, Paraguay, Peru, Dominican Republic, Uruguay, and Venezuela.

[77] The Convention on Territorial Asylum, which entered into force on December 29, 1954, has 12 States Parties: Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Panama, Paraguay, Uruguay, and Venezuela.

[78] *Cf.* OAS, Archives, vol. 3, No. 2, 1951, p. 119, cited in the Report of the Secretary General of the United Nations Organization to the General Assembly on the *Question of Diplomatic Asylum*, September 22, 1975, Part II, para. 74.

[79] *Cf.* Report of the Secretary General of the United Nations Organization to the General Assembly on the *Question of Diplomatic Asylum*, September 22, 1975, Part II, paras. 74 to 78.

[80] Article II.

it expands the places where diplomatic asylum can be granted[81]; settles the question as to which is the State receiving asylum to which the qualification of the nature of the crime or the reasons for the persecution corresponds unilaterally, taking into account the information that the territorial government offers[82]; requires urgency as a requirement for its granting, which must also be appreciated by the receiving State,[83] and seeks to regulate in greater detail the termination of diplomatic asylum, in particular that the territorial State may, at any time, demand that the asylum seeker be withdrawn from the country, for which it must grant a safe-conduct and guarantees that his or her life, liberty or personal integrity will not be endangered.[84] In other words, there is an obligation under this convention to guarantee asylees' exit to a foreign territory, understanding that said protection is for a strictly indispensable period of time.

88. Up until the Conventions of 1954, the word "asylum" was used exclusively to refer to the specific mechanism of "political" or "diplomatic" asylum (in diplomatic legations abroad), while the expression "refugee status" referred to the protection granted in the territory of the foreign State; this partly explains the "asylees-refugees" dichotomy and its implications for the protection of refugees.[85]

89. For their part, bilateral or multilateral treaties on extradition, which concern international cooperation in judicial matters, generally incorporate political or related crimes, or a common crime prosecuted for a political purpose or reason as an exception to extradition.[86] In this regard, the Court notes that Article 4(4) of the Inter-American Convention on Extradition[87] establishes that extradition is inadmissible "[w]hen, as determined by the requested State, the offense for which the person is sought is a political offense, an offense related thereto, or an ordinary criminal offense prosecuted for political reasons." Likewise, it prevents any interpretation of said treaty as a limitation of the right of asylum (article 6). Likewise, Article 9(c) of the Inter-American Convention on Mutual Assistance in Criminal Matters[88] provides that the requested State may deny assistance when it considers that "the request refers to a crime that is political or related to a political crime, or to a common crime prosecuted for political reasons." The Court notes, however, that there is no uniformity regarding the conceptualization of what constitutes a political or related crime at the legal level and in judicial and administrative practice.

90. Likewise, with the evolution of international law, progress has been made in codifying certain exclusions in special treaties, that is, crimes that cannot be considered political. In particular, Article 13 of the Inter-American Convention against Terrorism[89] it establishes that "[e]ach state party shall

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81 The second paragraph of Article I defines that "legation" shall be understood as any ordinary diplomatic mission headquarters, the residence of the heads of mission and the premises set up by them for the residence of asylum seekers when their number exceeds the normal capacity of buildings.

82 Articles IV and IX.

83 Articles V, VI, and VII.

84 Articles V, XI, XII, and XIII.

85 *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, footnote 162.

86 For example, it is included in Article 3(a) of the United Nations Model Treaty on Extradition, A/RES/45/116, December 14, 1990, available at: http://www.un.org/documents/ga/res/45/a45r116.htm

87 The Inter-American Convention on Extradition, which entered into force on March 28, 2002, has 6 States Parties: Antigua and Barbuda, Costa Rica, Ecuador, Panama, Saint Lucia, and Venezuela.

88 The Inter-American Convention on Mutual Assistance in Criminal Matters, which entered into force on April 14, 1996, has 28 States Parties: Antigua and Barbuda, Argentina, Bahamas, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Ecuador, El Salvador, United States of America, Grenada, Guatemala, Guyana, Honduras, Jamaica, Kazakhstan, Mexico, Nicaragua, Panama , Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.

89 The Inter-American Convention against Terrorism, which entered into force on October 7, 2003, has 24 States Parties: Antigua and Barbuda, Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Ecuador, El Salvador, United States of America, Grenada, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Trinidad and Tobago, Uruguay, and Venezuela.

take appropriate measures, consistent with the relevant provisions of national and international law, for the purpose of ensuring that asylum is not granted to any person in respect of whom there are reasonable grounds to believe that he or she has committed an offense established in the international instruments listed in Article 2 of this Convention." For its part, the Inter-American Convention against Corruption[90] Article XII, second paragraph, provides that "[e]ach of the offenses to which this article applies shall be deemed to be included as an extraditable offense in any extradition treaty existing between or among the States Parties." Likewise, in the universal system, the United Nations Convention against Corruption[91] article 44 stipulates the following: "[e] Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. […] A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence."

91. On the other hand, the Court considers that, while the institution of political asylum seeks to protect persons persecuted for political or common crimes related to them, or for political reasons, and that the prohibition of extradition, in these cases, is a mechanism to guarantee said protection, this figure cannot be used as a way to favor, procure, or ensure impunity in cases of serious violations of human rights. Understanding otherwise would result in misrepresenting the concept. In other words, the protection provided through asylum and the prohibition of extradition in cases of political or related crimes cannot be conceived to protect people who seek to evade their responsibility as masterminds or perpetrators of international crimes.[92] In this understanding, the Court has previously affirmed that extradition constitutes an important instrument in criminal prosecution in cases of serious human rights violations, therefore, a mechanism to combat impunity.[93] Based on the international legal regulations establishing the duty to investigate and judge, a State cannot grant direct or indirect protection to those prosecuted for crimes that involve serious human rights violations by unduly applying legal mechanisms that undermine the pertinent international obligations.[94]

92. Likewise, given the nature and seriousness of the facts in a context of serious and systematic violation of human rights, the need to eradicate impunity is presented to the international community as a duty of inter-state cooperation for these purposes. For this reason, the Court therefore deems it pertinent to declare that the States of the region are called on to collaborate in good faith in this respect, either by conceding extradition or prosecuting those responsible for the facts of this case in

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[90] The Inter-American Convention against Corruption, which entered into force on June 3, 1997, has 34 States Parties: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Ecuador, El Salvador, United States of America, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico , Nicaragua, Panama, Paraguay, Peru, the Dominican Republic, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.

[91] The United Nations Convention against Corruption, which entered into force on December 14, 2005, has 186 States Parties, of which 31 are OAS Member States: Antigua and Barbuda, Argentina, Bahamas, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Ecuador, El Salvador, United States of America, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico , Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Saint Lucia, Trinidad and Tobago, Uruguay, and Venezuela.

[92] *Cf.* Inter-American Commission on Human Rights (IACHR), Annual Report of the Inter-American Commission on Human Rights 2000, Chapter VI, Special Studies, *Recommendation on asylum and its relationship with international crimes*, OEA/Ser./L/V/II.111, Doc. 20 Rev., April 16, 2000, available at: http://www.cidh.oas.org/asilo.htm

[93] *Cf. Case of Goiburú et al. v. Paraguay. Merits, Reparations, and Costs.* Judgment of September 22, 2006. Series C No. 153, para. 132; *Case of the Mapiripán Massacre v. Colombia. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights dated July 08, 2009, Recitals clause 40, and *mutandis mutandi, Case of Wong Ho Wing et al. v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 30, 2015. Series C No. 297, para. 119.

[94] *Cf. Case of Goiburú et al. v. Paraguay*, supra, para. 132, and *Case of Manuel Cepeda Vargas et al. v. Colombia. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of May 26, 2010. Series C No. 213, para. 166.

their territory,[95] without prejudice to the international obligations to which they have subjected themselves to this effect (*principle aut dedere aut judicare*).

93. In conclusion, the adoption of a catalog of treaties related to the legal institution of asylum with typically Latin American connotations, as well as the non-extradition clause for crimes or political reasons, led to what has been commonly called "the Latin American tradition of asylum."[96] It should be noted that this Latin American tradition focuses protection on cases of persecution of a person for the commission of political or related common crimes, or for political reasons, and provides that the decision to grant asylum corresponded to the State itself, thereby making said decision its own prerogative. Subsequently, at the inter-American level, the traditional concept of Latin American asylum evolved with the normative development of the inter-American human rights system (*infra* para. 112).

A.4 Refugee status as a universal protection regime

94. In 1951, the Convention relating to the Status of Refugees was approved within the United Nations to deal with refugee situations as a result of the heinous and massive crimes committed during World War II in Europe. Said instrument, therefore, places great emphasis on the prohibition of refoulement and the right of assimilation. Its 1967 Protocol broadened the applicability of the 1951 Convention by eliminating the geographical and temporal restrictions that had limited its application to persons displaced in that context.[97]

95. This Court has already stated that the crucial importance of both treaties stems from the fact that they are the first international instruments that specifically regulate the treatment that should be given to those who are forced to abandon their homes owing to a rupture with their country of origin. Even though the 1951 Convention does not explicitly establish the right of asylum as a right, it is considered to be incorporated implicitly into its text,[98] which mentions the definition of refugee, the protection against the principle of non-refoulement, and a list of rights to which refugees have access. In other words, these treaties establish the basic principles on which the international protection of refugees is based, their legal status, and their rights and duties in the country that grants them asylum, as well as matters relating to the implementation of the respective instruments.[99] With the protection provided by the 1951 Convention and its 1967 Protocol, the institution of asylum assumed a specific form and mechanism at the global level: that of refugee status.[100] Thus, "the institution of asylum, which derives directly from the right to seek and enjoy asylum set out in Article 14(1) of the 1948 Universal Declaration of Human Rights (*infra* para. 113), is among the most basic mechanisms for the international protection of refugees."[101]

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95 *Cf. Case of Goiburú et al. v. Paraguay, supra,* paras. 131 to 132, and *Case of Herzog et al. v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment* of March 15, 2018. Series C No. 353, para. 296.

96 *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 137, and Advisory Opinion OC-21/14, *supra*, para. 74.

97 *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 138*,* and Advisory Opinion OC-21/14, *supra*, footnote 417.

98 *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 139, and Advisory Opinion OC-21/14, *supra*, footnote 413.

99 *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 139.

100 This is evident from the Preamble to the 1951 Convention, which indicates the importance of international cooperation to ensure the granting of asylum by means of the treaty, and has been reiterated by the UNHCR Executive Committee. *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 139*,* and Advisory Opinion OC-21/14, *supra*, para. 74.

101 United Nations High Commissioner for Refugees (UNHCR), Executive Committee, *Conclusion on the safeguarding of the institution of asylum*, A Doc. 82 (XLVIII)-1997, published on October 17, 1997, para. b. the Executive Committee had already appealed to the States Parties to the 1951 Convention and the 1967 Protocol to apply liberal practices in granting permanent or at least temporary asylum to refugees who have come directly to their territory. *Cf.* United Nations High Commissioner for Refugees (UNHCR), Executive Committee, Asylum, UN Doc. 5 (XXVIII)-1977, published in 1977, para. a. *See* also, *Case of the Pacheco Tineo Family Vs. Bolivia, supra*, para. 139, and Advisory Opinion OC-21/14, *supra*, footnote 414.

96. Subsequently, the Cartagena Declaration on Refugees was adopted in a colloquium organized by UNHCR and other institutions held in November 1984 in Cartagena de Indias, Colombia. The Declaration expanded the definition of refugee to include as refugees, in addition to the elements of the 1951 Convention and the 1967 Protocol, persons who have fled their countries because their life, safety or freedom had been threatened by generalized violence, foreign aggression, internal conflicts, mass human rights violations, or other circumstances that may have seriously disturbed public order.[102] The Court has found that the expanded definition of the Cartagena Declaration responds not only to the dynamics of forced displacement that originated it, but also meets the challenges of protection derived from other displacement patterns that currently take place.[103] The Declaration, in turn, ratified the peaceful, apolitical and exclusively humanitarian nature of the granting of asylum or the recognition of refugee status.[104] The expanded definition of Cartagena has been adopted in different national legislations in the Latin American region (*infra* para. 129).

97. The Court recalls that it has previously had the opportunity to develop various criteria related to State obligations with respect to asylum seekers and refugees from a human rights perspective, in light of Articles 22(7), 1(1) and 2 of the American Convention, which in turn took into account, under Article 29(b) of the Convention and the text of Article 22(7) itself, the specialty of the protection regime developed at a universal level under the 1951 Convention and its 1967 Protocol; the guidelines, criteria and other authorized pronouncements of bodies such as UNHCR, and the internal legislation of the States that implement an international protection scheme for said persons.[105] Said development was verified in the precedents in the *Case of the Pacheco Tineo Family v. Bolivia* and *Advisory Opinion OC-21/14*.

98. The legal value of the criteria developed by this Court regarding the right to asylum under refugee status has been reaffirmed by the States of the continent in the Declaration and Plan of Action of Brazil of 2014,[106] as an expression of its *opinio juris,* in which they held that:

> *Recognize* developments in the jurisprudence and doctrine of the Inter-American Court of Human Rights, in those countries in which they apply, regarding the content and scope of the right to seek and be granted asylum enshrined in the regional human rights instruments, their relationship to international refugee instruments, the jus cogens character of the principle of non-refoulement, including non-rejection at borders and indirect refoulement, and the integration of due process guarantees in refugee status determination procedures, so that they are fair and efficient[.][107]

99. In particular, the Court recalls that the right to seek and receive asylum under refugee status, recognized in Articles 22(7) of the American Convention and XXVII of the American Declaration, read together with other provisions of the Convention and in light of the special treaties, imposes on the

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102 *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 141, and Advisory Opinion OC-21/14, *supra*, para. 76.

103 *Cf.* Advisory Opinion OC-21/14, *supra*, para. 79.

104 Cartagena Declaration on Refugees of 1984, supra, Fourth conclusion. *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 141, and Advisory Opinion OC-21/14, *supra*, para. 77.

105 *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 143, and Advisory Opinion OC-21/14, *supra*, paras. 58 to 60. This integrating interpretation has also been used by the Inter-American Commission on Human Rights (IACHR), *Report on the Human Rights Situation of Asylum Seekers in the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106. Doc. 40. Rev. 1, February 28, 2000, paras. 26 and 28.

106 On December 2 and 3, 2014, the governments of Latin America and the Caribbean met in Brasilia on the occasion of the 30th anniversary of the 1984 Cartagena Declaration on Refugees. At the closing of the Ministerial Meeting, organized by the Government of Brazil, 28 countries and three territories of Latin America and the Caribbean (Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Cayman Islands, Chile, Colombia, Costa Rica, Cuba, Curacao, El Salvador, Ecuador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Suriname, Trinidad and Tobago, the Turks and Caicos Islands, Uruguay, and Venezuela) adopted the Brazil Declaration and Plan of Action by acclamation, agreeing to work together to uphold the highest standards of protection at the international and regional levels.

107 Twelfth paragraph of the preamble of the Brazil Declaration and Plan of Action.

State certain specific duties: i) obligation not to return (*non-refoulement*) and its extraterritorial application; ii) the obligation to allow the asylum application and not to reject it at the border; iii) obligation not to penalize or punish irregular entry or presence and not to arrest; iv) obligation to provide effective access to a fair and efficient procedure for determining refugee status; v) obligation to ensure the minimum guarantees of due process in fair and efficient procedures to determine refugee status or condition; vi) obligation to adapt procedures to the specific needs of children and adolescents; vii) obligation to grant international protection if the refugee definition is met and ensure the maintenance and continuity of refugee status; viii) obligation to restrictively interpret exclusion clauses, and ix) obligation to provide access to rights with equal conditions under refugee status.

100. In short, while the refugee protection regime was expanded temporarily and geographically with the 1967 Protocol and was consolidated at a universal level, having greater validity today than ever, as the numbers of forcibly displaced persons are the highest in contemporary history, there was no global consensus to advance a binding treaty regarding territorial and diplomatic asylum.

B. The nucleus of asylum as a legal concept and its particularities according to the modality

101. The term asylum has been defined as "the protection granted by a State in its territory or in another place under the control of one of its organs to a person who has come to request it."[108] Based on everything considered in the past, the Court considers that the figure of asylum in a broad sense rests on a definitive core idea that is related, on the one hand, to the protection that a State offers to a person who is not of its nationality or who does not habitually reside in its territory and, on the other, to not delivering that person to a State where his or her life, safety, liberty and/or integrity are or could be in danger. This is because the primary purpose of the institution is to preserve the life, security, liberty, or integrity of the person.

102. Worldwide, the situation of persons seeking asylum is of concern to the international community.[109] To this extent, it is considered, as a general characteristic, that asylum has as its purpose the protection of the human person, and consists of a peaceful and humanitarian act.

103. Several international instruments have pronounced themselves in this regard. The 1967 Declaration on Territorial Asylum states that "the granting of asylum by a State [...] is a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State."[110] This Declaration also highlights that asylum is part of the purposes proclaimed in the Charter of the United Nations, as is to achieve international co-operation in solving international problems of all kinds, including those of a humanitarian character.[111] In turn, the Montevideo Convention on Political Asylum of 1933 (*supra* para. 84) establishes in Article 3 that "[p]olitical asylum, as an institution of humanitarian character, is not subject to reciprocity." For its part, the 1951 Convention relating to the Status of Refugees recognized in its preamble "the social and humanitarian nature of the problem of refugees," calling on States to "do everything within their power to prevent this problem from becoming a cause of tension between States." The " the peaceful, non-political and exclusively humanitarian nature of grant of asylum or recognition of the status of refugee," as well as "the importance of

the internationally accepted principle that nothing in either shall be interpreted as an unfriendly act

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[108] *Cf.* Instituto de Derecho Internacional, Meeting of Bath, September 11, 1950, *Anuario, Volume 43 (II),* 1950, s. 1 (free translation) [*"la protection qu'un Etat accorde sur son territoire ou dans un autre endroit relevant de certains de ses organes à un individu qui est venu la rechercher"*].

[109] *Cf.* Article 2 of the 1967 Declaration on Territorial Asylum.

[110] Preamble of the Declaration on Territorial Asylum, of 1967.

[111] *Cf.* Preamble of the Declaration on Territorial Asylum, of 1967.

towards the country of origin of refugees," were ratified by the fourth provision of the Cartagena Declaration. The Organization of African Unity (OAU) has also recognized asylum as a peaceful and humanitarian institution, since article II(2) of the Convention regulating specific aspects of refugee problems in Africa states that " [t]he grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State."[112]

104. Notwithstanding the foregoing, the Court deems it appropriate to highlight that there is a contrast between territorial asylum and refugee status with diplomatic asylum, since the latter must be framed within interstate relations. While a State that grants asylum in its own territory makes use of one of its sovereign powers, in the case of diplomatic asylum, whoever seeks protection is in the territory of the State that claims it, or of a third State that requests it through request of another, so it must be made compatible with other areas of international law, such as diplomatic relations and the principle of non-intervention in the internal affairs of the receiving State.[113] In this sense, if there are no special agreements between the States in relation to diplomatic asylum, and said asylum is granted by the accrediting State with the opposition of the receiving State, a dispute could arise.

105. The place where asylum is granted makes a difference. Indeed, the fact that asylum is granted in one legation leads to taking additional aspects into account. On the one hand, at a universal level, diplomatic and consular relations are governed by the Vienna Conventions of 1961 and 1963 which, in principle, do not include the granting of asylum as a diplomatic or consular function.[114] On the other hand, from the Latin American tradition of diplomatic asylum, it can be deduced that the place where asylum can be granted in these frameworks expanded over the course of the various conventions to include other places that would not normally enjoy inviolability (*supra* para. 87).

106. That is why, beyond the question of functionality, the protection of the person for humanitarian reasons in exceptional circumstances in which their life, security, liberty and/or integrity are in imminent danger, is achieved based on the inviolability of the premises of the mission, which is guaranteed in the Vienna Convention on Diplomatic Relations, in two ways. On the one hand, through the prohibition imposed on the receiving State to enter them without the consent of the head of mission (article 22(1)) and, on the other, through a special obligation of protection, having to "adopt all appropriate steps" to protect them from any intrusion or damage (article 22(2)). Along these lines, the Court notes that, in accordance with universal instruments, forced entry into a diplomatic mission or other premises of the mission is prohibited, such as the residence of the head of the mission or his means of transportation, which also enjoy inviolability. On the other hand, the Court considers that the suspicion of a misuse of the inviolability of said premises, whether for violations of local laws or for the continuous shelter of an asylum seeker, clearly does not constitute a justification for the receiving State to forcibly enter the premises of the diplomatic mission, in contravention of the principle of inviolability. This is because Article 22 of the Vienna Convention on Diplomatic Relations does not establish any exception to the principle of inviolability.

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[112] OAU Convention Regulating Specific Aspects of Refugee Problems in Africa, approved by the Assembly of Heads of State and Government at its Sixth Ordinary Session (Addis Ababa, September 10, 1969) and entry entered into force June 20, 1974.

[113] *Cf*. Resolution No. 2625 (XXV) of the United Nations General Assembly, *Declaration on the principles of International Law regarding friendly relations and cooperation among States in accordance with the Charter of the United Nations*, October 24, 1970; Resolution No. 36/103 of the United Nations General Assembly, *Declaration on the inadmissibility of intervention and interference in the domestic affairs of States*, December 9, 1981, UN Doc. A/RES/36/103, and International Court of Justice (ICJ), *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America).* Judgment of June 27, 1986, para. 202 et seq.

[114] This is clear from the preparatory work, during which the proposal to include diplomatic asylum was expressly rejected. Indeed, "[a] Colombian amendment expressly proposed that the International Law Commission should deal not only with the diplomatic privileges and immunities but also with the right of asylum. This amendment was rejected by 24 votes to 17, with 10 abstentions, the majority of the Committee holding that the two questions were distinct and had always been regarded as such by the International Law Commission." Yearbook of the International Law Commission, 1956, Volume II, p. 131, para. 10.

107. Notwithstanding the foregoing, granting protection to a person who suffers persecution or imminent danger to his life, safety, liberty and/or integrity in a legation does not mean, *per se,* a use of the facilities that is incompatible with the functions of the mission. This is because the Vienna Convention on Diplomatic Relations itself integrates, in its article 41(3),[115] other norms derived from general international law or from the special agreements that are in force between the sending State and the receiving State in consideration of the particular situation. In the first case, as will be specified later, the principle of *non-refoulement*, as it has been progressively developed within the framework of international and regional systems for the protection of human rights, can impose extraterritorial obligations on host States in cases where they exercise jurisdiction; such obligations may be enforceable against third party States, given the *erga omnes* character of this norm in international law (*infra* paras. 188 and 192). In the second case, it is clear that this provision was inserted to amalgamate the general regulation of the diplomatic function with the provisions of the inter-American conventions on asylum in this region, or in any other bilateral agreement.

108. Additionally, the Court notes that it is a controversial aspect if diplomatic asylum gives rise to an obligation of the sending State to grant it, especially since, in accordance with the Latin American conventions adopted at the time under an inter-State vision, the States continue to consider that the power granting asylum to people persecuted for crimes or political reasons is of its own prerogative. The States themselves, which participated by sending observations to the Court within the framework of this advisory opinion, agreed in affirming that diplomatic asylum did not constitute an individual right of the person, but rather a state prerogative that could be granted by the States by virtue of their obligations derived from the conventions on diplomatic asylum or by virtue of protection decisions of humanitarian content and/or policies adopted on a case-by-case basis.[116] The decision to grant political asylum, in these cases, generally depends on the unilateral decision of the Executive Branch, without further participation by the applicant or specification of the minimum guarantees due in a fair and efficient procedure, in accordance with Articles 8 and 25 of the Convention.[117]

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115 Article 41(3) provides: "The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State."

116 For Argentina, Belize and Bolivia there is no state right or obligation to grant diplomatic asylum, since it is an act of state sovereignty. However, these States do recognize that what individual human rights include seeking asylum. For Ecuador, asylum is a human right, however, it stated that "seeking asylum is a right, receiving it is a prerogative of the receiving State, and not returning the refugee or asylum seeker is an international *erga omnes* legal obligation." Likewise, it affirmed that "the archaic vision of asylum as a prerogative of the State has been definitively overcome in light of the evolution and development of international human rights law that recognizes asylum and refuge as legal institutions and, as a human right, seek, receive, and enjoy asylum in any country." On the matter of diplomatic asylum, Jamaica maintained that it can only be justifiable on humanitarian grounds and that this does not imply accepting that there is a customary right to grant diplomatic asylum. For Jamaica, there is no rule of international law that establishes a right to either seek or receive diplomatic asylum. The fact that there are isolated cases in which it has been necessary to grant diplomatic asylum does not constitute compelling reason to consider that the humanitarian exception of diplomatic asylum is part of international law. For Mexico, in asylum, especially political asylum, its granting is a discretionary power that does not have an established procedure, while the recognition of refugee status is a declarative act of a universal nature where a legal status is recognized for a person who meets certain requirements. Granting or refusing to grant asylum is a discretionary power of the state, within the exercise of its sovereignty, to admit or not a person into its territory and act as their protector. The State is not obliged to grant it or to state the reasons why it grants or denies it, since it is an act of foreign policy. Panama indicated that asylum is the exclusive and discretionary power of the Executive Branch, a decision or not to grant the category of Political, Territorial, and/or Diplomatic Asylum, is made by prevailing the unilateral will of the receiving State as an expression of the exercise of its sovereignty. In a different way, Guatemala generically affirmed that asylum is a human right, without making distinctions as to the obligations that this would entail for the State.

117 According to the information available to the Court, eight OAS Member States make a differentiation in their laws between diplomatic asylum and territorial asylum, namely: Brazil, Costa Rica, Ecuador, Paraguay, Peru, Mexico, Dominican Republic, and Venezuela. These States specifically regulate diplomatic asylum, either by an express rule in that sense, or by reference to the 1954 Convention on Diplomatic Asylum. The Dominican Republic specifically refers to the 1933 Convention on Political Asylum, and although it lacks clear regulations on the procedure to be followed for applications for diplomatic asylum, it does make reference to the 1933 Convention and it should be noted that said State is also a Party to the 1954 Diplomatic Asylum Convention. The majority makes the President of the Republic responsible for deciding on the granting of diplomatic asylum, as is the case of Ecuador, although some involve intervention or consultation with the Ministry of Foreign

Moreover, in the case of diplomatic asylum, the States are not obliged to grant it or to state the reasons why it is granted or denied, in accordance with the respective agreements.

109. Consequently, the Court notes that the nature of the diplomatic functions and the fact that the legation is located in the territory of the receiving State, introduces a significant difference with territorial asylum, since diplomatic asylum cannot be conceived exclusively from its legal dimension; rather, it has other implications, since there is an interaction between the principle of State sovereignty, diplomatic and international relations, and the protection of human rights.

110. Likewise, although refugee status, territorial asylum, and diplomatic asylum are all forms of protection in favor of individuals who suffer persecution, each one operates under different circumstances and with different legal connotations in international and national law, making them not comparable situations. This means that the respective domestic agreements and/or laws govern each legal situation and establish a catalog of rights and duties of persons granted asylum under the various modalities.

111. In this sense, the Inter-American Juridical Committee ruled, affirming that, while "[a]sylum and refuge are institutions that coincide in the essential purpose of protecting the human person when they are victims of persecution, under the conditions established by international law," this does not undermine the specificities of both regimes, in particular their special application procedures.[118]

C. Crystallization of asylum as a human right in international instruments

112. With the emergence of human rights catalogs, the traditional concept of asylum evolved towards its positivization as a fundamental right. Thus, the American Declaration of the Rights and Duties of Man of 1948 was the first international instrument to include the right of asylum in its Article XXVII (*supra* para. 63), which led to the recognition of an individual right to seek and receive asylum in the Americas. This represented a substantial change in what has come to be known as the

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Affairs, as is the case of Brazil and Costa Rica, while Venezuela, Peru, and Mexico have put the Ministry of Foreign Affairs in charge of the matter. In the case of Mexico, this authority has been delegated to the Ministry of Foreign Affairs, provided it first has the prior opinion of the Ministry of the Interior. In the case of Paraguay, the corresponding procedure before a request for diplomatic asylum is not expressly determined in the internal legislation; however, it is one of the countries that expressly refers to the agreements and treaties on the subject matter. Regarding the procedure, the only country that has a specific procedure for diplomatic asylum is Mexico, as its domestic law provides that the request must be presented orally or in writing before embassies, permanent missions, and consular offices, identifying personal data and reasons for the asylum request. In turn, it establishes the possibility for the aforementioned representatives to hold interviews with the applicants, and the decision as to admissibility of the application must be notified to both the interested party and the territorial State. The remaining countries do not have rules that regulate the diplomatic asylum application process, contrary to what happens when it comes to refugee status, for which all states have specifically stipulated a concrete and detailed procedure for the recognition of said refugee status. As to the qualification of the fact that motivates the petition, Costa Rica, Mexico, and Peru make a domestic determination that the receiving State has such power, while the rest of the States reviewed will be governed by Article IX of the 1954 Convention on Diplomatic Asylum. In turn, as to the request for information from the territorial State to determine the setting surrounding the fact, when adopting the Guidelines on Asylum and Refuge, Mexico expressly contemplated such a possibility in the section corresponding to the asylum application procedure. Costa Rica, meanwhile, has established that the conditions established in international instruments will be verified through the Ministry of Foreign Affairs for asylum to proceed. Finally, regarding the issuance of a safe-conduct, the States of Brazil and Ecuador have specifically provided for it in their domestic law for cases of granting diplomatic asylum, while for the other States this matter are regulated by the 1954 Convention on Diplomatic Asylum. In the particular case of Mexico, both in the Law on Refugees, Complementary Protection and Political Asylum, and in the Guidelines on Asylum and Refuge, despite making the receiving State responsible for arbitrating the mechanisms for the beneficiary to enter Mexican territory after after asylum is granted, it does not specify how said circumstance will be implemented.

[118] *Cf.* Inter-American Juridical Committee (CJI), *Opinion of the Inter-American Juridical Committee on the relationship between asylum and refuge*, CJI/RES. 175 (LXXVIII-O/11), March 28, 2011. In: Annual Report of the Inter-American Legal Committee to the General Assembly, OAS/Ser.Q/IV.42, CJI/doc.399/11, 5 August 2011, p. 95, numbers 2 and 3, available at: http://www.oas.org/es/sla/cji/docs/INFOANUAL.CJI.2011.ESP.pdf

"Latin American tradition of asylum" that was based on the concepts of sovereignty and state prerogative.

113. This development was followed universally with the adoption that same year, although a few months later, of the Universal Declaration of Human Rights, in which the "right to seek and to enjoy in other countries asylum from persecution," was explicitly recognized in article 14[119] thanks to the initiative of the Latin American bloc. Indeed, the strong tradition of asylum in the region and the fact that the American Declaration, which already recognized the right to asylum, was previously adopted, exercised a preponderant influence.

114. Regarding the wording of the provision, it should be noted that, unlike the American Declaration and American Convention, which contain the right to "seek and receive asylum"., the Universal Declaration chose to include the right to "seek and enjoy asylum." The preparatory works, both of the Declaration and of the American Convention in this regard, are succinct and reveal a lack of exchange on the meaning of the terms, in clear contradiction to the debate that arose during the discussions held for the adoption of Article 14(1) of the Universal Declaration. The inclusion of the word "receive" in the initial draft was resisted by some countries because it was understood that it expressed an obligation on the part of the State to grant asylum under the conditions established in the norm. Therefore, the wording was modified and the Universal Declaration adopted the terms "seek and enjoy asylum" at the proposal of the United Kingdom, which was supported by the majority of States. In any case, the recognition of said right represented progress as to the situation in which asylum was considered a mere state prerogative. According to this understanding, if a person received asylum from the State, they had the right to enjoy it. The final text of article 14 was approved unanimously in the General Assembly, which generated criticism from its authors, due to the limited form of its recognition, which could result in leaving the content and scope of the right hollow.

115. Similarly, it is worth noting that, during the process of drafting the Universal Declaration, Uruguay and Bolivia made a proposal to incorporate diplomatic asylum under the scope of the right to asylum; however, this was not accepted. That is why the allusion to "any country" or "*other countries*" in the framework of article 14, incorporated at the proposal of the United States of America, clearly denotes that the right to asylum under said instrument only refers to territorial asylum and refugee status, and not to diplomatic asylum.

116. Additionally, despite the fact that the International Law Commission tried on numerous occasions to include the issue of diplomatic asylum in its agenda, these efforts were unsuccessful, since States have been reluctant to positivize the right to asylum. Therefore, the only relevant development that came into being later in the universal system on the institute of asylum deals with territorial asylum,[120] and it was embodied in the form of a declaration approved in 1967 by the

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[119] Article 14 of the Universal Declaration provides: "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."

[120] *Cf.* United Nations Audiovisual Library of International Law, Historical Archive, 1967 Declaration on Territorial Asylum, p. 3, available at: http://legal.un.org/avl/pdf/ha/dta/dta_ph_s.pdf. This document highlighted that "[a]t the twenty-first session of the General Assembly, held in 1966, the Sixth Committee held a general debate on the topic "Draft Declaration on the Right of Asylum" (Report of the Sixth Committee to the General Assembly, A/6570). During this discussion, while some representatives indicated that the Sixth Committee should feel free to consider both diplomatic and territorial asylum, the general view was that the Commission should limit itself to territorial asylum at that stage and ensure that such limitation was reflected appropriately in the text of the draft declaration. On November 7, 1966, the Sixth Committee decided to establish a new Working Group charged with preparing a preliminary draft declaration on the right to territorial asylum. The new Working Group consisted of 20 members and met 14 times between November 14 and December 6, 1966. The Working Group noted that, in accordance with its terms of reference, it was required to prepare a draft declaration on "territorial asylum," and that modifications had been proposed according to which the word "territorial" would be inserted after the word "asylum," which led to agreement on the title of the "Declaration on territorial asylum" (Report of the Sixth Committee to the General Assembly, annex, Report of the Working Group, A/6570). On December 7, 1966, the Working Group submitted a report to

General Assembly of the United Nations in its Resolution No. A/6716/1967. To a certain effect, the Declaration on Territorial Asylum reproduces and expands on the provisions already contained in articles 13 and 14 of the 1948 Universal Declaration of Human Rights. However, this right failed to crystallize into a universally binding human rights treaty,[121] as it did in the regional framework of the inter-American system.

117. On the other hand, the Court notes that, pursuant to Resolution No. 3321 (XXIX) of the General Assembly of December 1974, the States were invited to present their points of view regarding diplomatic asylum, to be included in a Report of the Secretary General on the matter, in order to initiate preliminary studies and aspects of the concept of diplomatic asylum. Although this report was presented to the General Assembly, no international instruments were adopted to regulate it.[122]

118. On the other hand, the right to asylum was codified in the inter-American system for the protection of human rights through the incorporation of article 22, paragraph 7, in the American Convention. Although the right to asylum was not proposed in the initial draft of the treaty, it was included at the request of Colombia and approved by the States of the region. After its inclusion was approved, the President of the Inter-American Specialized Conference on Human Rights, during which the Convention was adopted, "referred to the tragedy of the exiles and believed that this project would strengthen an institution that already exist[ed] in the inter-American conventions."[123]

119. At the level of regional systems, the Court notes that, although the right to asylum was not expressly accepted within the framework of the European Convention for the Protection of Human Rights and Fundamental Freedoms, it is recognized in Article 18 of the Charter of the Fundamental Rights of the European Union. According to its wording, "[t]he right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention [...] refugees and in accordance with the Treaty establishing the European Community.[...]."[124] In the African system, it is regulated in article 12(3) of the African Charter on Human and Peoples' Rights,[125] in the following terms: "[e]very individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions." In addition, an expanded regional definition of refugee is accepted.[126]

120. The Court deems it pertinent to specify that the human right that assists every person who suffers persecution within the framework of the inter-American system[127] consists of "seeking" and

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the Sixth Committee containing the text of the draft declaration (A/C.6/L.614), which was unanimously approved by the Sixth Committee on December 9, 1966. December 1966 […]".

121 *Cf.* United Nations Audiovisual Library of International Law, Historical Archive, Declaration on Territorial Asylum of 1967, *supra*, p. 1. There, it was noted that "[i]n 1952, the Commission on Human Rights rejected proposals to include a provision on the right of asylum in the draft International Covenant on Civil and Political Rights (Memorandum of the Secretary General on the right of asylum, E/CN.4/738)."

122 *Cf.* Report of the Secretary General of the United Nations Organization to the General Assembly on the *Question of Diplomatic Asylum*, September 2, 1975, Introduction, para. 2.

123 OAS Secretariat, *Inter-American Specialized Conference on Human Rights,* San José, Costa Rica, held from November 7 to 22, 1969, Minutes and Documents, OEA/Ser.K/XVI/1.2, Washington, DC, 1978, p. 248.

124 Article 18 of the Charter of Fundamental Rights of the European Union, published in the Official Journal of the European Union on June 7, 2016, (2016/C 202/02).

125 Article 12(3) of the African Charter on Human and Peoples' Rights (Banjul Charter), adopted on July 27, 1981, during the XVIII Assembly of Heads of State and Government of the Organization of African Unity, meeting in Nairobi, Kenya, which entered into force on October 21, 1986.

126 *Cf.* Article I of the OAU Convention Regulating Specific Aspects of Refugee Problems in Africa, *supra.*

127 UNHCR has noted that: "There is no universally accepted definition of the concept of 'persecution,' and the various attempts to formulate it have met with little success. Article 33 of the 1951 Convention makes it possible to deduce that any threat against the life or freedom of a person for reasons of race, religion, nationality, belonging to a certain social group, or political opinion is always persecution. Other serious human rights violations for the same reasons would also constitute

"receiving" asylum. These words cannot be separated one from the other; in other words, the law incorporates both components, which means that positions taken in attempts to break apart its regulatory force are inadmissible. Turning to the scope of said precepts, the preparatory works of the Declaration and of the American Convention in this regard are extremely brief and reflect an absence of debate on the meaning of the terms, in clear opposition to the debate that arose during the discussions for the adoption of article 14(1) of the Universal Declaration (*supra* para. 114).

121. In this regard, the Court notes that the scope of state action of the right to asylum must be assessed through the general obligations of respect, guarantee, and non-discrimination. However, as already noted, the Convention and the American Declaration do not contain a detailed and/or regulatory development of what this implies; rather, they refer to both domestic and international regulations that specifically govern the matter (*infra* paras. 139 to 141). In short, the article itself refers to the laws of each State and the international agreements in order to create a tangible way for the right to asylum to be put into operation. In other words, the State obligations and the rights that assist persons subject to international protection have been developed in more detail, and under the State's own will, in special international instruments, particularly international refugee law and the framework regional asylum regulations. However, this may not result in undermining the essential core of the right and the obligations acquired within the framework of human rights treaties.[128]

122. Thus, the Court considers that the right to seek encompasses the right to request or ask for asylum, either in the territory of the State or when it is in any way under its jurisdiction, without any discrimination whatsoever. In addition, for the right to seek asylum to have its useful effect, receiving States are required to allow people to request asylum or recognition of refugee status, which is why such persons may not be rejected at the border or expelled without an adequate and individualized analysis of their requests with due guarantees.[129] This requires, as this Court has highlighted, the corresponding right of asylum seekers to be ensured a proper assessment by the national authorities of their requests and of the risk that they may suffer in case of return to the country of origin.[130] The foregoing implies, in its aspect of positive obligations, that the State must allow entry into the territory and give access to the procedure for determining the status of asylum or refugee.[131] In the same sense, the Court considers that third party States cannot exercise actions whose objective is to prevent people in need of international protection from going to other territories in search of

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persecution." *Cf.* United Nations High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees,* December 2011, UN Doc. HCR/1P/4/SPA/REV.3, para. 51.

128 This is reinforced, for example, by the provisions of Article 5 of the 1951 Convention on Refugees, which provides that "[n]othing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention."

129 *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 153, and Advisory Opinion OC-21/14, *supra*, para. 210. *See* also, United Nations High Commissioner for Refugees (UNHCR), *Advisory Opinion on the extraterritorial application of non-refoulement obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, published on January 26, 2007, para. 8.

130 *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 139, citing ECHR, *Case of Jabari v. Turkey,* No. 40035/98. Judgment of July 11, 2000, paras. 48 to 50, and Advisory Opinion OC-21/14, *supra,* para. 81. Furthermore, the Commission held that "the United States summarily interdicted and repatriated Haitian refugees to Haiti without making an adequate determination of their status, and without granting them a hearing to ascertain whether they qualified as "refugees," breached Article XXVII of the American Declaration, since such actions prevented them from exercising said right." Inter-American Commission on Human Rights (IACHR), Merits Report No. 51/96, Case 10,675, *Interdiction of Haitians v. United States*, March 13, 1997, para. 163.

131 *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 153, and Advisory Opinion OC-21/14, *supra*, para. 210. *See* also, United Nations High Commissioner for Refugees (UNHCR), *Advisory Opinion on the extraterritorial application of non-refoulement obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, published on January 26, 2007, *supra,* para. 8.

protection, or hide behind legal fictions[132] so as not to give access to the corresponding protection procedures. Thus, the Court has affirmed that the practice of intercepting asylum seekers in international waters to prevent their requests from being evaluated in potential host States, "is contrary to the principle of non-refoulement, because it does not permit the evaluation of each person's specific risk factors."[133] The same applies to the pushing out of borders and Immigration control operations outside their own territory.[134]

123. For its part, the right to receive means that the State must grant protection as long as the requirements and conditions are met for it to be provided. Along these lines and within the framework of the right to receive asylum under refugee status, the Court has determined that it is the obligation of the host State to grant international protection when the person qualifies for it, either under the criteria of the traditional definition or the expanded Cartagena definition, as appropriate, and benefit other members of the family with this recognition, in attention to the principle of family unity.[135] Furthermore, the Court has concluded[136] that, once a person's status as a refugee has been determined, it is maintained, unless he comes within the terms of one of the cessation clauses.[137] Under this understanding, it is necessary to consider the obligation of States to maintain and give continuity to the determination of refugee status, which also becomes effective outside of its territory, unless one of the cessation clauses is incurred, as already stated.

D. Regulatory reception at the national level of the various types of asylum

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[132] *Cf*. Advisory Opinion OC-21/14, *supra,* para. 220, citing the Committee on the Rights of the Child, *General Observation No. 6: Treatment of unaccompanied and separated minors outside their country of origin*, A Doc. CRC/GC/2005/6, September 1, 2005, para. 12, in which it establishes that "[the] State obligations cannot be arbitrarily and unilaterally curtailed either by excluding zones or areas from a State's territory or by defining particular zones or areas as not, or only partly, under the jurisdiction of the State." *See* also, ECHR, *Case of Amuur v. France,* No. 19776/92. Judgment of June 25, 1996, para. 52.

[133] Advisory Opinion OC-21/14, *supra,* para. 220, Inter-American Commission on Human Rights (IACHR), Merits Report No. 51/96, Case 10,675, *Interdiction of Haitians v. United States*, March 13, 1997, paras. 156, 156, and 163, and *ECHR, Case of Hirsi Jamaa et al. v*. *Italy* [GS], No. 27765/09. Judgment of February 23, 2012, paras. 133 and 134.

[134] On this growing trend, *see* Inter-American Commission on Human Rights (IACHR), *Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System (Human Mobility Report)*, OAS/Ser.L/V/II. Doc. 46/15, 31 December 2015, para. 142.

[135] *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 225, and Advisory Opinion OC-21/14, *supra*, para. 81. *see* also, United Nations High Commissioner for Refugees (UNHCR), Procedural Rules for Refugee Status Determination under UNHCR's Mandate, Chapter 5, Processing of Claims Based on the Right to Family Unity, 2016, paragraph 5(1), available in English at: http://www.refworld.org/docid/577e17944.html Paragraph 5(1) states that "refugees have the right to family unity. Maintaining and facilitating family unity helps ensure the physical care, protection, emotional well-being and economic support of individual refugees. This may be achieved through various means. Granting derivative refugee status to the family members/dependents of a recognized refugee is one way of doing so in certain cases where the family members/dependents do not qualify for refugee status in their own right."

[136] *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 148 to 150.

[137] The cessation clauses are established in Article 1(C) of the Convention on the Statute of Refugees, and are based on the transitory nature of the international protection of the right to asylum, as well as respect for the will of the refugee. *Cf.* United Nations High Commissioner for Refugees (UNHCR), *Manual and Guidelines for Procedures and Criteria for Determining Refugee Status*, *supra*, para. 111, which establishes that "[t]he so-called "cessation clauses" (Article 1 C (1) to (6) of the 1951 Convention) spell out the conditions under which a refugee ceases to be a refugee. They are based on the consideration that international protection should not be granted where it is no longer necessary or justified.

124. Of the 35 OAS member states, 16 recognize the right to asylum within their constitutions.[138] Almost all of them –except Cuba and Haiti,[139] according to the information available to the Court–, also register complementary domestic legislation on political asylum and/or refugee status.

125. Eight countries do not have a constitutional norm, but contemplate the matter in national laws,[140] as is the case of Argentina, Belize, Canada, Chile, the United States of America, Panama, Suriname and Uruguay.

126. Eleven other States, according to the information available to the Court –Antigua and Barbuda, Bahamas, Barbados, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, and Trinidad and Tobago– do not have specific regulations at the local level. However, seven of the countries mentioned above have ratified the 1951 Convention, and six, its 1967 Protocol.[141]

127. Among the countries that regulate asylum matters at the domestic level, Brazil, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, the Dominican Republic, and Venezuela have chosen to differentiate between political asylum and the condition of refugee.[142]

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[138] (i) Bolivia, Political Constitution of the State of 2009, article 29.I; (ii) Brazil, Political Constitution of the Federative Republic of Brazil of 1988, article 4; (iii) Colombia, Political Constitution of Colombia of 1991, article 36; (iv) Costa Rica, Political Constitution of the Republic of Costa Rica of 1949, article 31; (v) Cuba, Constitution of the Republic of 1976, updated with the 2002 constitutional reform, article 13; (vi) Ecuador, Constitution of the Republic of Ecuador of 2008, Article 41; (vii) El Salvador, Constitution of the Republic of El Salvador of 1983, article 28; (viii) Guatemala, Political Constitution of the Republic of Guatemala of 1985, as reformed by Popular Consultation, Legislative Agreement of 18-93 November 1993, article 27; (ix) Haiti, Constitution of the Republic of Haiti of 1987, updated with the 2012 constitutional reform, article 57; (x) Honduras, Political Constitution of 1982, art. (xi) Mexico, Political Constitution of the Mexican United States of 1917 and its reforms, article 11, second paragraph; (xii) Nicaragua, Political Constitution of the Republic of Nicaragua of 1987 and its amendments, article 5, fifth paragraph and article 42; xiii) Paraguay, Constitution of the Republic of Paraguay of 1992, article 43; xiv) Peru, Political Constitution of Peru of 1993, articles 36 and 37; (xv) Dominican Republic, Constitution of the Dominican Republic of 2010, Article 46.2, and xvi) Venezuela, Constitution of the Bolivarian Republic of Venezuela of 1999, Article 69.

[139] Cuba has not ratified the 1951 Convention on the Status of Refugees or its 1967 Protocol, nor is it a State party to the American Convention on Human Rights. In this sense, the only regulation on asylum is the one provided for in its Constitution, which, in article 13, establishes the granting of asylum for subjects "persecuted for their ideals or struggles for democratic rights, against imperialism, fascism, colonialism and neocolonialism; against discrimination and racism; for national liberation; for the rights and demands of workers, peasants and students; for their progressive political, scientific, artistic and literary activities, for socialism and peace." As for Haiti, despite lacking internal legislation, it recognizes the right to asylum in its constitutional text for "political refugees" and adhered to the 1951 Convention on the Status of Refugees and its 1967 Protocol in 1984.

[140] Jamaica and Trinidad and Tobago have not adopted domestic legislation, but do regulate the matter through Refugee Policies. *Cf.* Jamaica, Refugee Policy 2009, available at: http://www.refworld.org/pdfid/500000def.pdf, and Trinidad and Tobago, Refugee Policy Draft, 2014, available at: http://www.refworld.org/docid/571109654.html.

[141] The countries of Antigua and Barbuda, Bahamas, Dominica, Jamaica, Saint Kitts and Nevis, Saint Vincent and the Grenadines, and Trinidad and Tobago have ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, except in the case of Saint Kitts and Nevis, which has only done the same with respect to the Convention, but not with regard to the Protocol. Suriname has also ratified both international treaties.

[142] i) Brazil, Immigration Law, Law No. 13,445 of May 24, 2017, article 27, and Regulatory Decree of Law No. 13,445, Decree No. 9199/2017 of November 20, 2017, article 108, which define the concept of political asylum; as well as Law No. 9,474, which Defines Mechanisms for the implementation of the Refugee Statute of 1951 and determines other measures of July 22, 1997, article 1, and Regulatory Decree No. 9199/2017, article 119 (referring to the Law No. 2,474) those that establish the definition of refugee status; ii) Costa Rica, General Law on Immigration and Aliens, Law No. 8764 of August 2009, Articles 106 and 109 and Regulations for Refugees (Regulation of Law No. 8764), Decree No. 36831-G of September 2011 , article 4; iii) Ecuador, Organic Law on Human Mobility, published on February 6, 2017, articles 95 to 98, and Regulations to the Organic Law on Human Mobility, Executive Decree No. 111, published on August 10, 2017, article 75 and next.; iv) Guatemala, Immigration Code, Decree No. 44-2016, published on October 18, 2016, articles 43 and 44; v) Honduras, Immigration and Foreigners Law, Decree No. 208-2003, published on March 3, 2004, articles 42 and 52, and Regulations of the Immigration and Foreigners Law, published on May 3, 2004, articles 45 to 58 and 61 to 65; vi) Mexico, Law on Refugees, Complementary Protection and Political Asylum, published on January 27, 2011 and modified on October 30, 2014, articles 2.I) and 2.VIII), and 13; vii) Nicaragua, Law for the Protection of Refugees, Law No. 665, published on July 9, 2008, article 1, and General Law on Immigration and Aliens, Law No. 761, published on July 6 and 7, 2011, article 27; viii) Paraguay, General Law on Refugees, Law No. 1,938, published on July 9, 2002, Article 1; Law No. 978/96 on Migrations, promulgated

Within this group, the laws of eight States distinguish the concept of political asylum between territorial and diplomatic asylum, generally grouping the cases of persecution for opinions, beliefs, or crimes of a political nature, but distinguishing them according to the corresponding modality.[143] Meanwhile, both Nicaragua and Guatemala, despite having differentiated political asylum from refugee status, do not mention in their legislation any distinction regarding the modalities of political asylum, whether territorial or diplomatic.[144] In another order, Honduras only regulates territorial political asylum.[145]

128. Among the OAS member states that do not make any distinction between political asylum and refugee status are Argentina, Belize, Bolivia, Canada, Chile, Colombia, El Salvador, Jamaica, Panama, and Uruguay. Although several of them do expressly recognize the right to asylum in their constitutional texts, the truth is that when legislating in the domestic order they have not distinguished cases of political persecution from those that imply refugee status.

129. After reviewing the local regulations of each State, it can be concluded that 15 of them internally adopted the definition of refugee that is based not only on the 1951 Convention and/or its 1967 Protocol, but also on the 1984 Declaration of Cartagena. In this sense, Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, and Uruguay[146] have extended protection to those subjects forced to flee their

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on November 8, 1996, article 27, and Decree No. 4483, which approves the National Immigration Policy of the Republic of Paraguay of November 27, 2015, paras. 80 and 81; ix) Peru, Asylum Law, Law No. 27840 of October 12, 2002, Article 4, and Refugee Law, Law No. 27891 of December 22, 2002, Article 3; x) Dominican Republic, Regulations of the National Commission for Refugees, Decree No. 2330 of September 10, 1984, Article 6; Regulations for the application of the General Immigration Law No. 285-04 of August 15, 2004, Decree No. 631-11 of October 19, 2011, articles 3, 46 and 47, and xi) Venezuela, Organic Law on Refugees or Refugees, Asylees, of September 13, 2001, articles 2.2), 5, 38 to 41, and Regulation of the Organic Law on Refugees and Asylees, Decree No. 2,491 of 2003, of July 4, 2003, Article 1. The United States of America makes a distinction between refugee status and asylum, based on the location of the person seeking protection. Refugee status is processed outside the United States of America, while the processing to obtain asylum implies that the applicant is present in said country, *see*: https://www.uscis.gov/humanitarian/refugees-asylum.

143 i) Brazil, Immigration Law, Law No. 13,445 of May 24, 2017, article 27 and Regulatory Decree of Law No. 13,445, Decree No. 9199/2017 of November 20, 2017, articles 108 to 118; ii) Costa Rica, General Law on Immigration and Aliens, Law No. 8764 of August 2009, articles 109 and 111; iii) Ecuador, Organic Law of Human Mobility, published on February 6, 2017, articles 95 to 97; iv) Mexico, Law on Refugees, Complementary Protection and Political Asylum, published on January 27, 2011 and modified on October 30, 2014, articles 2.I and 59 to 74. *see* also, Written Observations Submitted by Mexico, paras. 124 to 128; (v) Paraguay, Constitution of the Republic of Paraguay of 1992, Article 43; Law No. 10 of 978/96 on Migration, promulgated on 8 November 1996, article 27, and Decree no. 4483, by which the National Immigration Policy of the Republic of Paraguay of 27 November 2015 is adopted, paras. 80 and 81; vi) Peru, Asylum Law, Law No. 27840 of October 12, 2002, Article 4; vii) Dominican Republic, Constitution of the Dominican Republic of 2010, article 46(2), and Regulations for the application of the General Immigration Law No. 285-04 of August 15, 2004, Decree No. 631-11 of October 19, 2011, Article 46, as it refers to the Convention on Political Asylum, approved by Law No. 775, and viii) Venezuela, Organic Law on Refugees or Refugees, Asylees, of September 13, 2001, articles 2(2), and 38 to 41. Most of these States specifically regulate diplomatic asylum, either by express rule, or by reference to a Convention on diplomatic asylum. In the case of the Dominican Republic, although article 46(2) of its Constitution refers to "asylum in the national territory," in its internal legislation it refers only to political asylum, referring to the Convention on Political Asylum of Montevideo of 1933 to define the term (article 46 of Decree No. 631-11).

144 Article 5, fifth paragraph of the Political Constitution of the Republic, as well as article 27 of the General Law on Immigration and Immigration make a generic reference to "political asylum," without distinguishing between territorial and diplomatic asylum. Likewise, article 44 of the Guatemalan Immigration Code establishes that the granting of asylum constitutes a discretionary act of the State, in accordance with its Political Constitution. However, no differentiation is made between diplomatic and territorial asylum.

145 Honduras, Immigration and Foreigners Law, Decree No. 208-2003, published on March 3, 2004, article 52 and Regulations of the Immigration and Foreigners Law, published on May 3, 2004, articles 61 to 65.

146 Countries that incorporate the definition of refugee in accordance with the 1951 Convention and its 1967 Protocol, as well as the expanded definition established in the Cartagena Declaration in their national legislation: i) Argentina, General Law for the Recognition and Protection of Refugees, Law No. 26,165 of November 28, 2006, article 4, paragraphs a) and b); ii) Belize, Refugees Amendment Act, 2016 (originally adopted in 1991, with its last amendments of 2016-Refugees Act of 1991), Chapter 165, article 4(1); iii) Bolivia, Law for the Protection of Refugees, Law No. 251 of June 20, 2012, Article 15; iv) Brazil Law No. 9,474, which Defines Mechanisms for the implementation of the Refugee Statute of 1951 and determines other measures of July 22, 1997, Article 1. This article collects several of the assumptions of the extended definition of

country of habitual residence or of which they are nationals, because their lives, personal integrity or freedom are threatened by situations of generalized violence, foreign aggression, internal conflicts, massive violations of human rights, or other circumstances that have altered the domestic public order. The regulations of other States -Costa Rica, Canada, the United States of America, Jamaica, Panama, the Dominican Republic, Suriname, Trinidad and Tobago, and Venezuela- include the definition of refugee based on the 1951 Convention and/or its 1967 Protocol.[147]

130. Based on the foregoing, the Court notes that of the 35 OAS Member States, 31 recognize the right to asylum in a broad sense, either through their Constitutions or by having ratified an international agreement (among them, the 1951 Convention and/or its 1967 Protocol), or through national laws. On the other hand, only four[148] of these States do not have any regulations in this regard and have not ratified any international convention on asylum or refugee status.

E. The human right to seek and receive asylum within the framework of the inter-American system

131. This Court has already established that both the American Convention in its Article 22(7) and the American Declaration of the Rights and Duties of Man in its Article XXVII, have crystallized the subjective right of all persons to seek and receive asylum, going beyond historical understanding. of this institution as a "mere state prerogative" under the various inter-American conventions on asylum.[149]

132. In this regard, the Court has considered that the right to "seek and receive asylum" in the context of the inter-American system is enshrined as an individual human right to seek and receive international protection on foreign territory, including with this expression refugee status in accordance with pertinent instruments of the United Nations or corresponding domestic legislation, as well as asylum in accordance with the different inter-American conventions on this matter.[150] In

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refugee; v) Chile, Law establishing provisions on refugee protection, Law No. 20,430, promulgated on April 8, 2010 and published on April 15, 2010, Article 2, and its Regulatory Decree No. 837, promulgated on October 14, 2010 and published on February 17, 2011, article 2; vi) Colombia, Decree No. 2840 by which the Procedure for the Recognition of Refugee Status is established, rules are issued on the Advisory Commission for the Determination of Refugee Status and other provisions of December 6, 2013, article 1; vii) Ecuador, Organic Law on Human Mobility, published on February 6, 2017, article 98, and Regulations to the Organic Law on Human Mobility, Executive Decree No. 111, published on August 10, 2017, article 75 et seq.; viii) El Salvador, Law for the Determination of the Status of Refugees, Decree No. 918, published on August 14, 2002, Article 4; ix) Guatemala, Regulations for the Protection and Determination of Refugee Status in the Territory of the State of Guatemala, Government Agreement No. 383-2001 of September 14, 2001, Article 11, which continues to be applied in accordance with Government Agreement No. 83-2017; x) Honduras, Immigration and Foreigners Law, Decree No. 208-2003, published on March 3, 2004, Article 42; xi) Mexico, Law on Refugees, Complementary Protection and Political Asylum, published on January 27, 2011 and modified on October 30, 2014, Article 13; xii) Nicaragua, Refugee Protection Law, Law No. 665, published on July 9, 2008, Article 1; xiii) Paraguay, General Law on Refugees, Law No. 1,938, published on July 9, 2002, Article 1; xiv) Peru, Refugee Law, Law No. 27891 of December 22, 2002, Article 3, and Regulation of Legislative Decree No. 1350 (Legislative Decree on Migration), Supreme Decree No. 007-2017-IN, published on 29 March 2017, Article 4.d, and xv) Uruguay, Law on the Right to Refuge and Refugees, Law No. 18,076, published on January 5, 2007, Article 2.

147 i) Costa Rica, General Law on Immigration and Foreigners, Law No. 8764 of August 2009, article 106 and Regulations for Refugees (Regulation of Law No. 8764), Decree No. 36831-G of September 2011, articles 4 and 12; ii) Canada, Immigration and Refugee Protection Act (SC 2001, c. 27) of 2001 and its amendments, article 96; iii) United States of America, Immigration and Nationality Act (INA) of 1952, Section 101(a) (42); iv) Jamaica, Refugee Policy of 2009, Article 2; v) Panama, Decree No. 23 implementing Law No. 5 of October 26, 1977 approving the 1951 Convention and 1967 Protocol on the status of refugees, promulgated on February 12, 1998, Article 5; vi) Dominican Republic, Regulations of the National Commission for Refugees, Decree No. 2330 of September 10, 1984, Article 6, and Regulations for the application of the General Immigration Law No. 285-04 of August 15, 2004, Decree No. 631-11 of October 19, 2011, article 3; vii) Suriname, Foreigners Act 1991, of January 16, 1992, Article 16; viii) Trinidad and Tobago, Refugee Policy Draft, 2014, Section 2: Definitions and General Principles, and ix) Venezuela, Organic Law on Refugees or Refugees, Asylees, of September 13, 2001, articles 2(2) and 5.

148 These are: Barbados, Grenada, Guyana, and Saint Lucia.

149 *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 137, and Advisory Opinion OC-21/14, *supra*, para. 73.

150 *Cf*. Advisory Opinion OC-21/14, *supra,* para. 78.

addition, bearing in mind the progressive development of international law, the Court considers that the obligations under the right to seek and receive asylum are operative with respect to those persons who meet the components of the expanded definition of the Cartagena Declaration.[151]

133. However, since the concept of asylum is encompassing (*supra* para. 65), it is up to the Court to determine whether asylum, in accordance with the various inter-American conventions on the matter, and under Article 22(7) of the American Convention and XXVII of the American Declaration, covers both territorial asylum and diplomatic asylum. This, since the language of Article 22(7) of the Convention refers to the "case of persecution for political offenses or related common crimes," in such a way that, in principle, it could cover both modalities of political asylum, which is that requested in the territory of the host state or that requested in a diplomatic legation. This requires interpretation of the meaning of the factor *"foreign territory"* and the conditioning factor *"according to the legislation of each State and international conventions*" in the text of Article 22(7) of the American Convention and Article XXVII of the American Declaration. To this end, the Court, in accordance with its constant practice, will apply the interpretative guidelines set forth below.

E.1 Interpretive guidelines

134. To issue its opinion on the interpretation of the legal provisions brought forward for consultation, the Court will apply the Vienna Convention on the Law of Treaties, which includes the general and customary rule of interpretation of international treaties,[152] which implies the simultaneous application of good faith, the ordinary meaning of the terms used in the treaty in question, their context, and the purpose and aim of the former. As applicable, this Convention states:

> Article 31. General rule of interpretation.
>
> 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
>
> 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
>
> a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
> b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
>
> 3. There shall be taken into account, together with the context:
>
> a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
> b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
> c) any relevant rules of international law applicable in the relations between the parties.
>
> 4. A special meaning shall be given to a term if it is established that the parties so intended.
>
> Article 32. Supplementary means of interpretation. Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:
>
> a) leaves the meaning ambiguous or obscure; or
> b) leads to a result which is manifestly absurd or unreasonable.

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151 *Cf*. Advisory Opinion OC-21/14, *supra*, para. 79.

152 *Cf.* Advisory Opinion OC-21/14, *supra,* para. 52, and Advisory Opinion OC-24/17, *supra*, para. 55. *See* also, among others, International Court of Justice (ICJ), *Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia)*. Judgment of December 17, 2002, para. 37, and International Court of Justice, *Avena and other Mexican nationals (Mexico v. United States of America)*. Judgment of March 31, 2004, para. 83.

135. Likewise, since it is a human right, the Court must resort to the interpretative guidelines of the system. In the case of the American Convention, the subject matter and purpose of the treaty is "the protection of the fundamental rights of human beings,"[153] for which purpose it was designed to protect the human rights of people regardless of their nationality, against their own State or any other.[154] In this regard, it is essential to recall the specificity of human rights treaties, which create a legal system under which States assume obligations towards the persons subject to their jurisdiction[155] and where a complaint for the violation of such obligations may be filed by the victims of these violations and by the community of States Parties to the Convention through the direct action of the Commission[156] and even by lodging a petition before the Court.[157] In this sense, the interpretation of the provisions must be based on the values that the Inter-American system seeks to safeguard, from the "best perspective" for the protection of the individual.[158]

136. Hence, the American Convention expressly contains specific interpretation standards in its Article 29[159], including the *pro persona* principle, which means that no provision of the Convention shall be interpreted as restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said States is a party, or excluding or limiting the effects that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.[160]

137. In addition, the Court has repeatedly indicated that human rights treaties are living instruments, the interpretation of which must evolve with time and with the conditions of contemporary life. This evolutive interpretation is consequent with the general rules of interpretation set out in Article 29 of the American Convention, as well as with those established by the Vienna Convention on the Law of Treaties.[161]

E.2 Interpretation of the conventional text around the phrase "according to the legislation of each State and international conventions"

138. The Court has already established, in its *Advisory Opinion OC-21/14,* that the very text of Articles 22(7) of the Convention and XXVII of the Declaration prescribes two criteria for determining the holders of the right, on the one hand, "the legislation of each country", that is, of the country in which the asylum is sought; and on the other, "international agreements."[162] In other words, it is through international agreements or domestic legislation that regulate the cases in which the person

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153 Advisory Opinion OC-2/82, *supra,* para. 29, and Advisory Opinion OC-24/17, *supra*, para. 56.

154 *Cf.* Advisory Opinion OC-2/82, *supra,* para. 33, and Advisory Opinion OC-24/17, *supra*, para. 56.

155 *Cf.* Advisory Opinion OC-2/82, *supra,* para. 29, and Advisory Opinion OC-24/17, *supra*, para. 56.

156 *Cf.* Articles 43 and 44 of the American Convention.

157 *Cf.* Article 61 of the American Convention.

158 *Cf. Case of González et al. ("Campo Algodonero") v. Mexico Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 16, 2009. Series C No. 205, para. 33, and Advisory Opinion OC-24/17, *supra*, para. 56.

159 Article 29 of the American Convention provides the following: "Restrictions Regarding Interpretation: No provision of this Convention shall be interpreted as: a) permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein; b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party; c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have."

160 *Cf.* Advisory Opinion OC-21/14, *supra,* para. 54, and Advisory Opinion OC-24/17, *supra*, para. 57.

161 *Cf.* Advisory Opinion OC-16/99, *supra,* para. 114, and Advisory Opinion OC-24/17, *supra*, para. 58.

162 *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 137 and 140, and Advisory Opinion no. 21/14, *supra*, para. 74.

can exercise the right to seek and receive asylum and access international protection. This Court has interpreted that the limitations relating to both criteria do not have to be fulfilled together, since there are cases in which, despite the fact that a State has not ratified a particular international treaty, such as the 1951 Convention, its 1967 Protocol, or any of the Latin American conventions, it has adopted domestic regulations guaranteeing the right of asylum, or on the contrary, having ratified such conventions, it has not adopted domestic legislation in this regard (*supra* paras. 124 to 126). Interpreting this otherwise would extremely limit Article 22(7).

139. The reference to domestic legislation and international conventions was introduced in Article XXVII of the American Declaration and included literally in the American Convention. In accordance with the preparatory work for the Declaration (*infra* para. 152), the Court notes that the purpose of the States, when including such references, was to derive the regulation of the asylum that people could seek and receive in domestic legislation or international agreements. At the time of the adoption of the Declaration, one of the concerns, beyond the inclusion of asylum in the strict sense or political asylum, consisted of the exponential increase in the flow of people seeking refuge, derived from the horrors of World War II, and the intention of providing them with protection. This concern, and the need for its regulation, contributed to the adoption of said normative reference, which had the objective of resorting in a convergent and supplementary way to domestic or international regulations, to provide content to article 22(7) of the Convention.[163]

140. In this regard, to the extent that article 22(7) refers to domestic legislation or international agreements to integrate its content more specifically, the right to seek and receive asylum is not an absolute right. However, in accordance with Article 29 of the American Convention, domestic legislation can broaden the scope of protection, but never restrict it beyond the minimum established by the American Convention and international law. Likewise, the reference to international agreements cannot be interpreted in the sense of limiting the right beyond what is established in the Convention itself.

141. Similarly, the expression "according to the legislation of each State" does not imply that States do not have an immediate obligation to respect and guarantee the right to asylum. The Court has already established that "[t]he fact that the States parties can establish the conditions for the exercise of [a] right […], does not prevent the enforceability under international law of the obligations that they have contracted under article 1(1) [...]."[164] The fact that article 22(7) derives from domestic legislation and international conventions does not impose the adoption of regulations or the ratification of treaties as a prior condition for the respect and guarantee of the right to asylum. In this regard, this Court has indicated that "the system of the Convention is aimed at recognizing the rights and freedoms of individuals, and not at empowering States to do so."[165] Therefore, although Article 22(7), interpreted alongside the obligations set forth in Articles 1(1) and 2 of the Convention, requires States to adopt legislative and other measures to guarantee the right to seek and receive asylum, in accordance with the Convention itself and other relevant international agreements, this does not mean that if the State does not have domestic legislation or is not a party to other treaties

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163 *Cf.* Advisory Opinion OC-21/14, *supra,* para. 78.

164 *Enforceability of the right to reply (Arts. 14(1), 1(1), and 2 of the American Convention on Human Rights).* Advisory Opinion OC-7/86 of August 29, 1986. Series A No. 7, paras. 13, 24, and 28.

165 Advisory Opinion OC-7/86, *supra,* para. 24. The Court was consulted in this advisory opinion, as to the meaning of the expression "under the conditions as the law may establish," contained in Article 14(1) (the right to reply), asking it if it only empowered States to create the right through law without an immediate obligation to respect and guarantee it, or if the term referred rather to the obligation to take measures to guarantee the right. In this regard, this Court has indicated that "the system of the Convention is aimed at recognizing the rights and freedoms of individuals not at empowering States to do so." To this effect, the Court has already established that "[t]he fact that the States parties can establish the conditions for exercising the right of reply does not prevent the enforceability under international law of the obligations that they have contracted under article 1(1) [...] Consequently, if for any reason, the right to reply cannot be exercised by "every person" subject to the jurisdiction of a state party, this would constitute a violation of the Convention."

that imply international obligations on asylum, it is not obliged to respect and guarantee the right to seek and receive asylum. Correlatively, those States that do not yet have domestic legislation must adopt the necessary measures to adequately regulate and, in accordance with conventional parameters, implement the procedure and other aspects necessary to give useful effect to the right to seek and receive asylum.

142. Similarly, the Court notes that it is Article 22(7) itself that makes reference to "international agreements," without restricting it to specific agreements on human rights, nor to regional treaties. Therefore, the reference to "international conventions" implies that the interpretation that this Court must make of Article 22(7) should not only focus on the Latin American conventions on asylum, but also on the instrument of greatest universal relevance in terms of the protection of persons fleeing persecution, the 1951 Convention relating to the Status of Refugees, and its 1967 Protocol. This is extremely important, since, based on an evolutionary interpretation, it allows the Court to interpret the grounds for persecution in Article 22(7) in light of the current conditions regarding the needs for international protection, with a gender approach, diversity, and age. For example, in relation to age, the *Advisory Opinion OC-21/14* highlighted that "it should be recognized that the elements of the definition of refugee were traditionally interpreted based on the experiences of adults or persons over 18 years of age.[166] Hence, in view of the fact that children are entitled to the right to seek and receive asylum[167] and may, in consequence, submit applications for recognition of refugee status in their own capacity, whether or not they are accompanied, the elements of the definition should be interpreted taking into account the specific forms that child persecution may adopt, as well as the way in which they may experience these situations.[168]

143. Having established the existence of international regulations that regulate both territorial and diplomatic political asylum, and the adoption of internal legislation in several countries of the region that regulates said concepts (*supra* paras. 81 to 87 and 127), the terminology "according to the legislation of each State and international agreements" provides an initial parameter to assume that all forms of asylum could be included under the protection of Article 22(7) of the Convention. However, this statement must be assessed alongside interpretation of the term "in a foreign territory," which was included both in Article 22(7) of the American Convention, and in Article XXVII of the American Declaration, which the Court will analyze below.

E.3 Interpretation of the conventional text around the phrase "in a foreign territory"

144. Now the Court must determine whether the fact that both Article 22(7) of the American Convention and Article XXVII of the American Declaration have incorporated the factor "in a foreign territory" leads to the interpretation that only territorial asylum is protected under said norm, excluding diplomatic asylum. For this, the Court will analyze the ordinary meaning of the terms (literal interpretation), the context (systematic interpretation), as well as the subject matter and purpose of the treaty (teleological interpretation), and the origin of the evolutive interpretation in relation to the scope of such provisions. In addition, in accordance with Article 32 of the Vienna Convention, supplementary means of interpretation will be used, including the preparatory work for the treaty.

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166 *Cf.* Advisory Opinion OC-21/14, *supra,* para. 80, citing the United Nations High Commissioner for Refugees (UNHCR), *International protection guidelines. Child asylum claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees,* published on December 22, 2009, UN Doc HCR/GIP/09/08, para. 1.

167 According to UNHCR, even at a young age the child can be considered the main asylum seeker. *Cf*. United Nations High Commissioner for Refugees (UNHCR), *International protection guidelines. Child asylum claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, supra*, para. 8. *see* also, Advisory Opinion OC-21/14, *supra*, para. 80.

168 *Cf*. Advisory Opinion OC-21/14, *supra,* para. 80.

145. Article 22(7) of the American Convention includes the right to seek and receive asylum "in a foreign territory." The same wording was adopted by the States in Article XXVII of the American Declaration. From the interpretation of the ordinary meaning of the terms, it is possible to understand that "in a territory" refers to the protection provided by a State within its own geographical space.[169] The Royal Academy of the Spanish Language defines territory as "a portion of the land surface belonging to a nation, region, province, etc." Meanwhile, the term "foreigner" should be interpreted in relation to the individual who will be protected; that is to say, that people who seek asylum will receive protection precisely in the territory of a State that is not the one of their nationality or habitual residence.

146. However, although the text seems literally clear, it is necessary to analyze it by applying all the elements that make up the rule of interpretation of Article 31 of the Vienna Convention (*supra* para. 134). This Court has also said this when pointing out that the "ordinary meaning" of the terms cannot be a rule by itself but must be involved within the context and, especially, within the subject matter and purpose of the treaty, in such a way that the interpretation does not lead in any way to weaken the protection system enshrined in the Convention.[170]

147. In this sense, upon making a systematic interpretation of all the articles of the Convention, it becomes clear that article 22 as a whole, unlike the others, incorporates the term territory into the right, connecting it to the enjoyment and exercise thereof. In addition, according to article 22(7) itself, as well as article XXVII of the Declaration, which integrates the regional conventions on asylum, it is necessary to make an interpretation of the context of the norm in order to identify the role of territory in formulating the right. To do this, the Court will go on to analyze the terminology used in those conventions. In this regard, the Court notes that the formula "in a territory" or "in a foreign territory" is also included in the treaties of the Latin American tradition of asylum to which the Convention and Declaration itself refers. In particular, reference is made to the wording "in a territory" or "in a foreign territory" in articles 15 to 17 of the 1889 Treaty on International Penal Law,[171] in Article 1 of the 1928 Havana Convention on Asylum[172], in article 11 of the Montevideo Treaty on Political Asylum and Refuge of 1939,[173] in articles I and II of the Convention on Territorial

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169 This without prejudice to the fact that, currently, certain States regulate cases in which applications for refugee status can be submitted and/or approved outside their territory, after which the individuals for whom said protection has been determined enter the territory of the receiving State to enjoy it.

170 *Cf.* Advisory Opinion OC-1/82, *supra,* para. 43 a 48, and *Case of González et al. ("Campo Algodonero") v. Mexico, supra*, para. 42.

171 Article 15 provides: "No offender who has taken refuge in the territory of a State shall be surrendered to the authorities of any other State except in compliance with the rules governing extradition." Article 16 establishes: "Political refugees shall be afforded an inviolable asylum; but it is the duty of the nation of refuge to prevent asylees of this kind from committing within its territory any acts which may endanger the public peace of the nation against which the offense was committed." Article 17: "Such persons as may be charged with non-political offenses and seek refuge in a legation, shall be surrendered to the local authorities by the head of the said legation, at the request of the Ministry of Foreign Relations, or of his own motion. Said asylum shall be respected with regard to political offenders, but the head of the legation shall be bound to give immediate notice to the government of the State to which he is accredited; and the said government shall have the power to demand that the offender be sent away from the national territory in the shortest possible time. The head of the legation shall, in his turn, have the right to require proper guarantees for the exit of the refugee without any injury to the inviolability of his person. The same rule shall be applicable to the refugees on board a man-of-war anchored in the territorial waters of the State.

172 Article 1 provides: "It is not permissible for States to grant asylum in legations, warships, military camps or military aircraft, to persons accused or condemned for common crimes, or to deserters from the army or navy. Persons accused of or condemned for common crimes taking refuge in any of the places mentioned in the preceding paragraph, shall be surrendered upon request of the local government. Should said persons take refuge in foreign territory, surrender shall be brought about through extradition, but only in such cases and in the form established by the respective treaties and conventions or by the constitution and laws of the country of refuge.

173 Chapter 11 Regarding asylum in foreign territory, article 11 provides that: "Asylum granted within the territory of the high contracting parties, in conformity with the present treaty, is an inviolable asylum for persons pursued under the conditions described in Article 2; but it is the duty of the State to prevent the refugees from committing within its territory, acts which may endanger the public peace of the State from which they come. The determination of the causes that induce

Asylum of 1954,[174] and in Articles XII and XVII of the 1954 Convention on Diplomatic Asylum.[175] In accordance with said articles, it is clear that the terms in question are used to denote the protection provided within the territory of a State, in the framework of territorial asylum, as opposed to asylum in legations, warships, military camps or aircraft. Therefore, the very context of Article 22(7) of the Convention and Article XXVII of the Declaration, when referring to international conventions on the matter, further strengthens the conclusion that the terminology "in a foreign territory" clearly refers to the protection derived from territorial asylum as opposed to diplomatic asylum, whose scope of protection is the legations, among other places.

148. However, as to the interpretation, based on the subject matter and purpose of the American Convention, and the *pro person* principle, it is important to highlight that the Court, when carrying out its interpretative work, should not consider them in isolation, but rather in conjunction with the other methods of interpretation. In this sense, although the subject matter and purpose of the American Convention is "the protection of the fundamental rights of human beings," said purpose must be understood within the limits established by the treaty itself and in accordance with the guarantees it recognizes. The purpose of asylum is to protect people who have been forced to flee for certain reasons.

149. Meanwhile, the *pro person* principle implies that, when interpreting the provision of a treaty, precedence must be given to applying the rule that grants greater protection to the rights of the person, and/or the rights must be interpreted broadly and in favor of the individual. However, the application of this principle cannot displace the use of other interpretation methods, nor can it ignore the results achieved as a consequence thereof, since all of them should be understood as a whole. If the contrary is affirmed, the unrestricted application of the *pro person* principle would lead to the delegitimization of the actions of the interpreter. Therefore, based on what was analyzed in the preceding paragraphs, for this Court, both the literal interpretation of Article 22(7) of the Convention, and the interpretation of its context, particularly the conditions established in the Latin American conventions that define the meaning of the terms "in a foreign territory," it is clear that the right to seek and receive asylum has as its purpose the protection in foreign territory of people who have been forced to flee for certain reasons, which translates into the protection of territorial asylum. This is because it is not possible to assimilate legations into a foreign territory. This interpretation is confirmed as indicated by the preparatory work of the American Declaration, as will be further discussed *infra*.

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the asylum appertains to the State which grants it. The grant of asylum does not entail for the State which makes that grant, any obligation to admit the refugees indefinitely into its territory."

[174] Article I: "Every State has the right, in the exercise of its sovereignty, to admit into its territory such persons as it deems advisable, without, through the exercise of this right, giving rise to complaint by any other State." Article II establishes that: The respect which, according to international law, is due the Jurisdictional right of each State over the inhabitants in its territory, is equally due, without any restriction whatsoever, to that which it has over persons who enter it proceeding from a State in which they are persecuted for their beliefs, opinions, or political affiliations, or for acts which may be considered as political offenses.

Any violation of sovereignty that consists of acts committed by a government or its agents in another State against the life or security of an individual, carried out on the territory of another State, may not be considered attenuated because the persecution began outside its boundaries or is due to political considerations or reasons of state.

[175] Article XII stipulates that: "Once asylum has been granted, the State granting asylum may request that the asylee be allowed to depart for foreign territory, and the territorial State is under obligation to grant Immediately, except in case of force majeure, the necessary guarantees, referred to In Article V, as well as the corresponding safe-conduct." Article XVII establishes that: "Once the departure of the asylee has been carried out, the State granting asylum is not bound to settle him in its territory; but it may not return him to his country of origin, unless this is the express wish of the asylee. If the territorial State informs the official granting asylum of its intention to request the subsequent extradition of the asylee, this shall not prejudice the application of any provision of the present Convention. In that event, the asylee shall remain in the territory of the State granting asylum until such time as the formal request for extradition is received, in accordance with the Juridical principles governing that Institution In the State granting asylum. Preventive surveillance over the asylee may not exceed thirty days.

150. On the other hand, as regards the evolutionary principle (*supra* para. 137), the Court notes that, despite the fact that, in practice, some States continue to grant diplomatic asylum in specific cases, said protection responds to the same situations for which the longstanding Latin American conventions on asylum were adopted, while there has been no further development of this in international law in this regard after the year 1954. In other words, neither the concept of diplomatic asylum nor the reasons for its codification have evolved. Therefore, this method does not provide any basis for a conclusion other than the one stated in the previous paragraph.

151. Finally, the Court considers it necessary to refer to the preparatory works of the American Declaration in order to confirm the interpretation made in the preceding paragraphs, since those of the Convention do not make express reference to the reasons for which the wording "in a foreign territory" would have been adopted.

152. Indeed, said preparatory work establishes the following:

> The representative of the United States "asked if it was considered that this right [that of asylum] was subject to the domestic legislation of each country; and whether it referred to diplomatic asylum or had a much broader meaning, which could include, for example, European refugees, in which case the Immigration regulations of each country would have to be taken into account." The representative of Bolivia, by virtue of the suggestion made by the United States, clarified that the Working Group added the phrase "in accordance with international agreements" at the end of the article. The representative of the Dominican Republic, with the support of Nicaragua, Peru, and Bolivia, stated that "he considered it appropriate for the article to include the exception that States could make to avoid receiving undesirable refugees, and to this effect, proposed that the following be added to the final part of the article: … in accordance with the legislation of each country and with international conventions." The representative of Guatemala "objected to the proposed addition; in his opinion, the article not only referred to refuge in foreign territory but also to asylum in legations, in which case national legislation could not be applied." To this, the representative of the Dominican Republic replied that "the article exclusively addressed the case of refuge in foreign territory, and that the case of asylum in legations would continue to be governed exclusively by the stipulations of international treaties." The President put Article XXVII to a vote, "with the addition proposed by the Delegate of the Dominican Republic, and it was passed."[176]

153. From the foregoing, it is clear that the will of the States when drafting the American Declaration -and it can even be affirmed that they maintained that position when drafting the American Convention since the wording of Article XXVII of the Declaration was maintained- was to exclude the concept of diplomatic asylum as a modality protected under said international norms, maintaining the regulation of this figure in accordance with the Latin American conventions on asylum, that is, in the understanding that it constitutes a state prerogative.

154. The Court considers that the express intention not to include diplomatic asylum within the sphere of the inter-American human rights system could be due to the will, also expressed within the framework of this procedure (*supra* para. 108), to conceive diplomatic asylum as a State right, or in other terms as a State prerogative, and thus preserve the discretionary power to grant or deny it in specific situations.

155. As previously mentioned, under international public law, there is no universal agreement regarding the existence of an individual right to receive diplomatic asylum, despite the fact that this concept could constitute an effective mechanism to protect individuals in circumstances that make democratic life difficult in a given country. This lack of international consensus does not imply ignoring that, sometimes, the remedy of diplomatic asylum cannot be completely ruled out, since the States retain the power to grant it, given that it is one of their sovereign powers (*infra* para. 163). Indeed, people have sought asylum in diplomatic missions for centuries, and States, in turn, have granted some form of protection to individuals persecuted for political reasons or who face an

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[176] Ninth International Conference of American States, Bogotá, Colombia held from March 30 to May 2, 1948, Acts and Documents, Volume V, p. 595.

imminent threat to their life, liberty, security and/or or integrity, not always recognizing diplomatic asylum, but on many occasions applying negotiations of a diplomatic nature.[177] To this extent, in accordance with international law, diplomatic asylum consists of a humanitarian practice with the purpose of protecting the fundamental rights of the person (*supra* para. 103), which has been granted in order to save lives or prevent damage to fundamental rights in the face of an imminent threat.

156. In conclusion, the Court interprets that diplomatic asylum is not protected under Article 22(7) of the American Convention or Article XXVII of the American Declaration. Therefore, the Court has considered that the right to seek and receive asylum in the context of the inter-American system is enshrined as an human right to seek and receive international protection in a foreign territory, including under this expression refugee status in accordance with pertinent instruments of the United Nations or corresponding domestic legislation, as well as territorial asylum in accordance with the different inter-American conventions on said subject matter.

157. Finally, the Court finds it appropriate to rule on the argument referring to the fact that diplomatic asylum would constitute a regional custom. The Court notes that, in order to determine the existence of a norm of customary international law, it is necessary to verify: i) a general practice created by the States, and ii) its acceptance as a legal norm (*opinio juris sive necessitatis*), that is, that it must be followed with the conviction of the existence of a legal obligation or a right.[178]

158. In this case, a customary norm of a regional nature is alleged, which is particular and without universal scope. The International Court of Justice, in the aforementioned *Case of Asylum (Colombia v. Peru)*, determined that a regional customary rule could be configured when the existence of a uniform and constant use as an expression of a right of the State granting asylum has been proven.[179] However, taking into account the broad nature of its advisory jurisdiction, the Inter-American Court understands that it needs to consider such nature within the framework of the 35 OAS Member States, for the sake of the general interest and without limiting the scope of its advisory opinions to only a few States (*supra* para. 31).

159. However, the Court notes that not all OAS Member States are parties to the various conventions on diplomatic asylum and, furthermore, as already stated, said conventions are not uniform in their terminology or their provisions, since they respond to a progressive development of the regulation of diplomatic asylum in response to certain situations that arise (*supra* paras. 80 and 88).

160. On the other hand, the Court reiterates that some States participating in the framework of this proceeding expressly stated their perspective that there is no uniform position in the Latin American subregion to conclude that diplomatic asylum is part of the regional custom, but rather that it would only be a treaty-based system. Furthermore, most of the participating States

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[177] By way of illustration, below are several examples of factual situations or assumptions of fact similar to those that give rise to asylum, regardless of the classification of protection granted by the State in question: from 1956 to 1971, the United States Embassy in America in Budapest housed the Hungarian Cardinal József Mindszenty for 15 years; in 1988, the United Kingdom embassy in Luanda, Angola, provided asylum for six months to Olivia Forsyth, a former spy for the apartheid regime in South Africa; in 1990 the French embassy in Beirut granted asylum to former Lebanese Prime Minister Michel Aoun; in 2002 a group of 28 dissidents from North Korea obtained protection in the diplomatic headquarters of Germany, the United States of America and Japan and were later granted a safe-conduct to South Korea; since 2012, the embassy of the Republic of Ecuador in London, United Kingdom, has provided asylum to the founder of Wikileaks, Julian Assange; In 2016, for 10 months, the Swiss embassy in Baku granted protection to Emin Huseynov, a journalist and human rights activist, until the Azerbaijani authorities granted him safe conduct.

[178] Article 38.1 b) of the Statute of the International Court of Justice refers to international custom as "as evidence of a general practice accepted as law." *see* also, Advisory Opinion OC-20/09, *supra*, para. 48.

[179] *Cf.* International Court of Justice (ICJ), *Asylum case (Colombia v. Peru)*. Judgment of November 20, 1950, pages 277 to 278.

maintained that there is no legal obligation to grant diplomatic asylum, since this constitutes an act of foreign policy (*supra* para. 108).

161. Additionally, despite the fact that the United States of America in practice has granted protection in its embassies in specific cases, since 1933, it has persistently opposed the matter,[180] namely at the 7th International Conference of American States, it stated that, "since the United States of America does not recognize or subscribe to the doctrine of political asylum as part of international law, the Delegation of the United States of America refrains from signing this Convention." (*supra* footnote 72).

162. Therefore, the Court finds that the element of the *opinio juris* necessary to determine a customary norm is not present, despite the practice of States to grant diplomatic asylum in certain situations or to grant some type of protection in their legations (*supra* para. 155).

163. Therefore, the granting of diplomatic asylum and its scope must be governed by the interstate conventions that regulate it and the provisions of domestic laws. In other words, those States that have signed multilateral or bilateral agreements on diplomatic asylum, or that have it recognized as a fundamental right in their domestic regulations, are bound by the terms established in said regulations. In this sense, the Court deems it appropriate to highlight that States have the power to grant diplomatic asylum as an expression of their sovereignty, which is included in the logic of what is known as the "Latin American tradition of asylum."

V
THE CONTENT AND SCOPE OF STATE OBLIGATIONS IN ACCORDANCE WITH ARTICLES 1(1), 5 AND 22(8) OF THE AMERICAN CONVENTION ON HUMAN RIGHTS

164. The Court has been consulted on the international obligations derived from the American Convention and the American Declaration in a situation of diplomatic asylum for the receiving State.

165. Having specified that the right to asylum, within the framework of the Convention and the American Declaration, only includes the modalities of territorial asylum provided for in international agreements or in domestic legislation, the Court goes on to address the second question.

166. In principle, it is appropriate to highlight that the above statement does not leave the person seeking protection in diplomatic premises in destitution; rather, their status and the obligations of the receiving State are governed in the specific framework of the respective inter-American agreements having an interstate character, which oblige the States Parties, or their very own domestic laws (*supra* para. 163).

167. Notwithstanding the foregoing, the Court will determine whether, despite the fact that diplomatic asylum is not protected within the framework of the inter-American system (*supra* para. 156), there are other human rights obligations for the receiving State and, where appropriate, for third States, due to the risk that people who go to a legation in search of protection may suffer. This comes despite the fact that it is not considered that granting asylum constitutes a diplomatic or consular function according to general international law (*supra* para. 105), States are obliged to respect, through all their public officials and state authorities, the rights and freedoms recognized in the American Convention of all persons under their jurisdiction, whether or not they are nationals, without any discrimination. Therefore, certain obligations subsist in the event that it is established that the person who goes to or breaks into diplomatic headquarters in search of protection is under the jurisdiction of that State.

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[180] *Cf*. Report of the Secretary General of the United Nations Organization to the General Assembly on the *Question of Diplomatic Asylum*, September 22, 1975, Part II, para. 220.

168. To this end, below, the Court will first analyze the scope of general human rights obligations regarding the concept of jurisdiction and its application in legations, to later specifically address the obligations derived from the principle of non-refoulement.

A. General obligations derived from Article 1(1) of the American Convention in relation to the rights established in said instrument, and its application in legations

169. Within the framework of the Convention, Article 1(1), which is a general rule whose contents extends to all the provisions of the treaty, make States Parties responsible for the fundamental or *erga omnes* duties of respecting and enforcing (guaranteeing) the rules of protection and ensuring effectiveness of the rights recognized therein in all circumstances and with respect to all persons, "without any discrimination whatsoever."[181] These obligations are imposed on States, for the benefit of human beings under their respective jurisdictions, and regardless of the nationality or migratory status of the protected persons,[182] and must be carried out in light of the principle of equality before the law and non-discrimination.[183] Thus, the protection of human rights must necessarily comprise the concept of the restriction of the exercise of state power.[184]

170. In addition, the Court has highlighted that there is an inseparable connection between the obligation to respect and guarantee human rights and the principle of equality and non-discrimination.[185] The Court has indicated that the notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority. It is equally irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified.[186] At the current stage of the evolution of international law, the principle of equal protection before the law and non-discrimination belongs to *jus cogens*, because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws. States must abstain from carrying out any action that, in any way, directly or indirectly, is aimed at creating situations of *de jure* or *de facto* discrimination.[187]

171. The Inter-American Court has indicated that the use of the term jurisdiction in Article 1(1) of the American Convention implies that the state duty to respect and guarantee human rights is owed to every person who is in the territory of the State or who, in any way, is subject to its authority,

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181 *Cf. Case of Velásquez-Rodríguez v. Honduras Merits.* Judgment of July 29, 1988. Series C No. 4, para. 164; Advisory Opinion OC-23/17*, supra,* para. 115, and Advisory Opinion OC-24/17, *supra,* para. 63.

182 *Cf.* Advisory Opinion OC-18/03, *supra,* para. 109; Advisory Opinion OC-21/14, *supra,* para. 113, and Advisory Opinion OC-23/17, *supra,* para. 41.

183 *Cf. Case of the Girls Yean and Bosico v. Dominican Republic. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 08, 2005. Series C No. 130, para. 155, and *Case of V.R.P., V.P.C. et al. v. Nicaragua. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of March 08, 2018. Series C No. 350, para. 289.

184 *Cf. The expression "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 21, and *Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 30, 2016. Series C No. 329, para. 222.

185 *Cf.* Advisory Opinion OC-18/03, *supra,* para. 85, and Advisory Opinion OC-24/17, *supra*, para. 63.

186 *Cf.* Advisory Opinion OC-4/84, *supra,* para. 55, and *Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparations, and Costs.* Judgment of March 09, 2018. Series C No. 351, para. 270.

187 *Cf.* Advisory Opinion OC-18/03, *supra,* para. 101, 103, and 104, and *Case of Ramírez Escobar et al. v. Guatemala*, *supra*, para. 270.

responsibility, or control.[188] Along these lines, the Court has established in its precedents that the fact that a person is subject to the jurisdiction of the State is not the same as being in its territory.[189]

172. To this effect, the Court has affirmed that, according to the rules for the interpretation of treaties, as well as the specific rules of the American Convention, the ordinary meaning of the word "jurisdiction," interpreted in good faith and taking into account the context, object and purpose of the American Convention, signifies that it is not limited to the concept of national territory, but covers a broader concept that includes certain ways of exercising jurisdiction beyond the territory of the State in question.[190]

173. Accordingly, the margin of protection for the rights recognized in the American Convention is broad, insofar as the States Parties' obligations are not restricted to the geographical space corresponding to their territory, but encompass those situations where, even outside a State's territory, a person is subject to its jurisdiction.[191] Therefore, the "jurisdiction" referred to in Article 1(1) of the American Convention is not limited to the national territory of a State but contemplates circumstances in which the extraterritorial conduct of a State constitutes an exercise of its jurisdiction.[192]

174. Similarly, the Human Rights Committee has recognized the existence of extraterritorial conducts of States that entail the exercise of their jurisdiction over another territory or over persons outside their territory.[193] Therefore, the States Parties have the duty to respect and guarantee the rights established in the International Covenant on Civil and Political Rights "to any person who is under the authority or effective control of the State Party even if not in the territory of the State Party."[194] In particular, said Committee has recognized that the acts of consular officers may fall within the scope of the International Covenant on Civil and Political Rights.[195] The International Court of Justice has reaffirmed this assertion, establishing that "the Covenant on Civil and Political Rights is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory."[196]

175. The European Court of Human Rights has indicated that, under the European Convention on Human Rights, the exercise of jurisdiction outside the territory of a State requires that a State Party to that Convention exercise effective control over an area outside its territory, or over persons who are either lawfully or unlawfully in the territory of another State,[197] or that, based on the consent,

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188 *Cf.* Advisory Opinion OC-21/14, *supra,* para. 61, and Advisory Opinion OC-23/17, *supra*, para. 73.

189 *Cf.* Advisory Opinion OC-21/14, *supra,* para. 219, and Advisory Opinion OC-23/17, *supra*, para. 74.

190 *Cf.* Advisory Opinion OC-23/17, *supra,* para. 74.

191 *Cf.* Advisory Opinion OC-23/17, *supra,* para. 77.

192 *Cf.* Advisory Opinion OC-23/17, *supra,* para. 78.

193 *Cf.* Advisory Opinion OC-23/17, *supra,* para. 79, citing the Human Rights Committee, *Case of Lilian Celiberti de Casariego v. Uruguay* (Communication No. 56/1979), UN Doc. CCPR/C/13/D/56/1979, Opinion adopted on July 29, 1981, para. 10(3), and *Case of Mabel Pereira Montero v. Uruguay* (Communication No. 106/1981), UN Doc. CCPR/C/18/D/106/1981, Opinion adopted on March 31, 1983, para. 5.

194 Human Rights Committee, *General Comment No. 31: The nature of the general legal obligation imposed*, UN Doc. CCPR/C/21/Rev.1/Add.13, May 26, 2004, para. 10.

195 *Cf.* Human Rights Committee, *Case of Sophie Vidal Martins v. Uruguay* (Communication No. R.13/57), UN Doc. CCPR/C/15/D/57/1979, Opinion adopted on March 23, 1982, para. 7; *Case* of *Samuel Lichtensztejn v. Uruguay*, (Communication No. 77/1980), UN Doc. CCPR/C/OP/2, Opinion adopted on March 31, 1983, para. 8(3), and *Case of Mabel Pereira Montero v. Uruguay* (Communication No.106/1981), UN Doc. CCPR/C/OP/2, Opinion adopted on March 31, 1983, para. 5, and *Case of Carlos Varela Núñez v. Uruguay*, (Communication No. 108/1981), UN Doc. CCPR/C/OP/2, Opinion adopted on July 22, 1983, para. 9(3).

196 International Court of Justice (ICJ), Advisory Opinion on the matter *Legal consequences of the construction of a wall in the occupied Palestinian territory*, July 9, 2004, para. 111.

197 *Cf.* Advisory Opinion OC-23/17, *supra,* para. 79, citing the ECHR, *Case of Loizidou v. Turkey* (Preliminary Objections), No. 15318/89. Judgment of March 23, 1995, para. 62, and *Case of Al-Skeini et al. v. United Kingdom* [GS], No. 55721/07.

invitation or acquiescence of the Government of the other territory, it exercises all or some of the public powers that it would normally exercise.[198] The decisive matter for the European Court will be to establish the *de jure* jurisdiction in cases in which the State is empowered to act under the rules of public international law, or *de facto* jurisdiction, establishing "control" over people or territory based on the facts and circumstances of each specific case. Specifically, it has stated that "it is evident that the jurisdiction of the State may arise from acts of diplomatic or consular agents present in foreign territory in accordance with the norms of international law, given that these agents exercise authority and control over other persons."[199]

176. In this same sense, the Court understands that the jurisdiction of a State extends to extraterritorial conduct that entails the exercise of its jurisdiction over another territory or over persons outside its territory. However, in order to establish jurisdiction over individuals, the jurisprudence of various bodies has addressed very diverse circumstances in attention to the relationship established between the State and the individual, among them the acts of diplomatic or consular agents present in the foreign territory or "the exercise of physical power and control over the person in question."[200]

177. Based on the foregoing, the Court finds that the host States are bound by the provisions of Article 1(1) of the Convention, as long as they are exercising authority or who is under its control, regardless of whether he or she is on the land, rivers, or sea or in the air space of the State.[201] Therefore, the Court considers that the general obligations established by the American Convention are applicable to the actions of diplomatic agents deployed in the territory of third States, provided that a link of personal jurisdiction with the person concerned can be established.

B. Obligations derived from the principle of non-refoulement within the scope of a legation

178. Regarding the matter submitted for consultation, the Court indicates that it is of cardinal importance to analyze the validity of the principle of non-refoulement in the case of an asylum application before a legation.

179. The Court has defined as an integral component of the right to seek and receive asylum, the obligation of the State not to return a person to a territory in which they are at risk of persecution.[202] Indeed, the principle of non-refoulement or *non-refoulement* constitutes the cornerstone of the international protection of refugees and asylum seekers[203] and has been codified in article 33(1) of

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Judgment of July 07, 2011, para. 138, and *Case of Catan et al. v. Moldova and Russia* [GS], No. 43370/04, 8252/05, and 18454/06. Judgment of October 19, 2012, para. 311.

198 *Cf*. Advisory Opinion OC-23/17, *supra,* para. 79, citing the ECHR, *Case of Chiragov et al. v. Armenia* [GS], No. 13216/05. Judgment of June 16, 2015, para. 168, and *Case of Banković et al. v. Belgium and others* [GS], No. 52207/99. Admissibility Decision of December 12, 2001, para. 71.

199 ECHR, *Case of Al-Skeini et al. v. United Kingdom* [GS], No. 55721/07. Judgment of July 07, 2011, para. 134. See also, ECHR, *Case of Banković et al. v. Belgium et al.* [GS], No. 52207/99. Admissibility Decision of December 12, 2001, para. 73, and European Commission of Human Rights, *X. v. Federal Republic of Germany*, No. 1611/62, Decision on admissibility of September 25, 1965, p. 168*; X v*. *United Kingdom*, No. 7547/76, Decision on admissibility of December 15, 1977, para. 1, and *W. M. v. Denmark,* No. 17392/90. Decision on admissibility of October 14, 1992, para. 1.

200 ECHR, *Case of Al-Skeini et al. v. United Kingdom* [GS], No. 55721/07. Judgment of July 07, 2011, para. 136. Similarly, the Human Rights Committee, *Case of Delia Saldias de Lopez v. Uruguay* (Communication No. 52/1979), UN Doc. CCPR/C/OP/1, Opinion adopted on July 29, 1981, para. 12.1.

201 Advisory Opinion OC-21/14, *supra,* para. 219.

202 *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, paras. 151 and 152, y Advisory Opinion OC-21/14, *supra*, paras. 81 and 212.

203 *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 151, citing the United Nations High Commissioner for Refugees (UNHCR), Executive Committee, *General conclusions on the international protection of refugees*, UN Doc. 65 (XLII)-1991, published October 11, 1991, para. c, and Advisory Opinion OC-21/14, *supra*, para. 209.

the 1951 Convention.[204] The principle of non-refoulement in this area has been recognized as a norm of customary International Law[205] binding on all States, whether or not they are parties to the 1951 Convention or the 1967 Protocol.[206]

180. However, the principle of non-refoulement is not an exclusive component of international refugee protection, since, with the evolution of international human rights law, it has found a solid foundation in the various human rights instruments and interpretations made by control bodies. Indeed, the principle of non-refoulement is not only fundamental for the right to asylum, but also as a guarantee of various non-derogable human rights, since it is precisely a measure whose purpose is to preserve the life, liberty, or integrity of the protected person.[207]

181. Thus, within the framework of the American Convention, other provisions on human rights such as the prohibition of torture and other cruel, inhuman, or degrading punishment or treatment, recognized in Article 5 of the American Convention, provide a solid base of protection against return. In this regard, this Court has already indicated that, starting from Article 5 of the American Convention, read together with the *erga omnes* obligations to respect and enforce the norms that protect human rights, reveals the obligation of the State not to deport, return, expel, extradite, or remove in any other way to another State a person who is subject to its jurisdiction, or to a third State that is unsafe, when there are grounds for believing that they would be in danger of being subjected to torture, or cruel, inhuman or degrading treatment.[208] This principle seeks, above all, to ensure the effectiveness of the prohibition of torture in any circumstance and with regard to any person, without any discrimination. Since it is an obligation derived from the prohibition of torture, the principle of non-refoulement in this area is absolute and also becomes a peremptory norm of customary international law; in other words, of *ius cogens*.[209]

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[204] Article 33.1 of the 1951 Convention establishes that "no Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

[205] *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 151, and Advisory Opinion OC-21/14, *supra*, para. 211, citing United Nations High Commissioner for Refugees (UNHCR), Global Consultations on International Protection: Ministerial Meeting of the States Parties to the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees (December 12-13, 2001)-Declaration of the States Parties to the 1951 Convention and/or the 1967 Protocol on the Status of Refugees, UN Doc. HCR/MMSP/2001/9, adopted on December 13, 2001, which in its paragraph 4 states: "Acknowledging the continuing relevance and resilience of this international regime of rights and principles, including at its core the principle of non-refoulement, whose applicability is embedded in customary international law."
See also, United Nations High Commissioner for Refugees (UNHCR), *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, *supra*, paras. 14 to 16; Executive Committee, General Conclusions on the international protection of refugees, Conclusion No. 25 (XXXIII)-1982, para. b; Executive Committee, General Conclusions on the international protection of refugees, Conclusion No. 79 (XLVII)-1996, para. i); Cartagena Declaration on Refugees, *supra*, fifth conclusion, and Declaration of Brazil, "A Regional Cooperation and Solidarity Framework to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean," adopted in Brasilia, on December 3, 2014, preamble , p. 2. Likewise, *see* United Nations General Assembly Resolution, UN Doc. A/RES/51/75, February 12, 1997, paragraph 3, and UN Doc. A/RES/52/132, December 12, 1997, paragraph 12 of the preamble.

[206] *Cf*. United Nations High Commissioner for Refugees (UNHCR), *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, published on January 26, 2007, *supra,* para. 15.

[207] *Cf.* Advisory Opinion OC-21/14, *supra,* paras. 211 and 224 to 227.

[208] *Cf.* Advisory Opinion OC-21/14, *supra,* para. 226, and *Case of Wong Ho Wing v. Peru, supra*, para. 127.

[209] *Cf.* Advisory Opinion OC-21/14, *supra,* para. 225. *See* also, Report submitted by the Special Rapporteur on Torture, Mr. Theo van Boven, *Civil and Political Rights, Particularly Issues Related to Torture and Detention*, UN Doc. E/CN.4/2002/137, February 26, 2002, para. 14, and Committee against Torture (CAT), General Comment No. 4: *Implementation of article 3 of the Convention in the context of article 20*, advanced unedited version, February 9, 2018, para. 9. This paragraph establishes that "[t]he principle of "non-refoulement" of persons to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture is similarly absolute.

182. Additionally, the inter-American system has a specific treaty, the Inter-American Convention to Prevent and Punish Torture, which includes the principle of non-refoulement in its article 13, as follows: "[e]xtradition shall not be granted nor shall the person sought be returned when there are grounds to believe that his life is in danger, that he will be subjected to torture or to cruel, inhuman or degrading treatment, or that he will be tried by special or ad hoc courts in the requesting State." On the other hand, this Court has already indicated that the principle, as regulated, is also associated with protection of the right to life and certain judicial guarantees, so that it is not restricted merely to protection against torture.[210]

183. For its part, the United Nations Human Rights Committee has interpreted article 7 of the International Covenant on Civil and Political Rights[211], in the sense of including a duty of the States Parties "not […] to expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement."[212] Said duty arises from the general obligations of Article 2 of the Covenant, which requires that the States Parties respect and guarantee the rights recognized therein to all individuals who are in their territory and to all persons subject to their jurisdiction, which entails the obligation "not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 [right to life] and 7 [prohibition of torture and other cruel, inhuman or degrading treatment] of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed."[213]

184. In turn, Article 3 of the Convention against Torture provides that "[n]o State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

185. The Court has also shown that, in addition to including the right to request and receive asylum and the prohibition of torture, the American Convention has an express provision that deals with non-refoulement. Indeed, Article 22(8) of the American Convention establishes the prohibition to deport or return any "alien" to "a country, whether or not it is his country of origin" – in other words, to her or his country of nationality or, in the case of a stateless person, the country of habitual residence, or to a third State – in which "his right to life or personal freedom" are "in danger of being violated because of his race, nationality, religion, social status or political opinions."[214]

186. The Court has interpreted that, under the American Convention, the principle of non-refoulement established in Article 22(8) takes on a particular meaning, even though this provision was included in the paragraph following the recognition of the individual right to seek and receive

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210 *Cf.* Advisory Opinion OC-21/14, *supra,* para. 229, and *Caso Wong Ho Wing v. Peru, supra*, para. 128.

211 Said article establishes: "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

212 Human Rights Committee, *General Comment No. 20: Replacing General Comment No. 7: Prohibition of torture and cruel treatment or punishment (Article 7)*, UN Doc. HRI/GEN/1/ Rev.7, March 10, 1992, para. 9.

213 Human Rights Committee, *General Comment No. 31: Nature of the general legal obligation imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, May 26, 2004, para. 12. Likewise, in several decisions concerning individual cases, the Committee has affirmed that it is not possible to extradite, deport, expel, or remove in any way a person from the territory of a State if there are sufficient grounds to believe that there is a risk of irreparable damage to their rights, and without first taking into consideration the person's allegations about the existing risk. Human Rights Committee, *Case of Joseph Kindler v. Canada* (Communication No. 470/1991), UN Doc. CCPR/C/48/D/470/1991, Opinion adopted on November 11, 1993, para. 6.2; *Case of Charles Chitat Ng v. Canada* (Communication No. 469/991), UN Doc. CCPR/C/49/D/469/1991, Opinion adopted on January 07, 1994, para. 6.2; *Caso Jonny Rubin Byahuranga v. Denmark* (Communication No. 1222/2003), UN Doc. CCPR/C/82/D/1222/2003, Opinion adopted on December 9, 2004, para. 11(3), and *Case Jama Warsame v. Canada,* (Communication No. 1959/2010), UN Doc. CCPR/C/102/D/1959/2010, opinion adopted on September 1, 2011, para. 8(3).

214 *Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 134, and Advisory Opinion OC-21/14, *supra*, para. 214.

asylum, and is a broader right in its meaning and scope than the one included in international refugee law. Thus, the prohibition of refouler established in Article 22(8) of the Convention offers complementary protection to aliens who are not asylum seekers or refugees, in cases in which their right to life or freedom is threatened for the abovementioned reasons.[215] The protection of the principle of non-refoulement established in the provision of the American Convention that is being examined covers any alien and not only a specific category among aliens, such as those who are asylum seekers and refugees.[216]

187. It is widely accepted that the principle of non-refoulement applies not only in the territory of a State, but also at the border,[217] international transit zones and on the high seas,[218] due to the preponderant role it plays in guaranteeing access to territorial asylum. Consistent with non-refoulement obligations under international human rights law, UNHCR has held that the decisive criterion does not lie in determining whether the person is in the national territory of the State or in a territory that is *de jure* under the sovereign control of the State, but whether or not that person is subject to the effective authority and control of the State.[219] Similarly, the Committee against Torture clarified that the principle of non-refoulement "includes any territory or facilities and must be applied to protect any person, citizen or non-citizen without discrimination subject to the de jure or de facto control of a State party."[220] Likewise, it stressed that "[e]ach State Party must apply the principle of non-refoulement in any territory under its jurisdiction or in any area under its control or authority, or on board a vessel or aircraft registered in the State Party, to any person, including persons requesting or in need of international protection, without any form of discrimination and regardless of the nationality or statelessness or the legal, administrative or judicial status of the person involved under ordinary or emergency law."[221]

188. In addition, the Court notes that Article 22(8)of the Convention does not establish any geographical limitation, with which the general criterion of jurisdiction is appropriate, that is, it has a broad scope of application. Therefore, for the purposes of applying the principle of non-refoulement within the framework of the Convention and the Declaration, what is relevant is establishing the link

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215 *Cf.* Advisory Opinion OC-21/14, *supra*, para. 217.

216 *Cf. Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 135, and Advisory Opinion OC-21/14, *supra*, para. 215.

217 The Court has interpreted that the principle of non-refoulement protects those who want to assert their right to seek and receive asylum and find themselves, either at the border, or cross it without being formally or legally admitted into the country's territory, otherwise, this right would become illusory and empty of content, that is, without any value or effect. This necessarily implies that these people cannot be rejected at the border or expelled without an adequate and individualized analysis of their requests. Non-repudiation at the border has also been expressly recognized in the laws of several OAS member states, as one of the cardinal principles of refugee protection. See the laws of various countries on the continent, including Argentina, Bolivia, Chile, Ecuador, Honduras, Mexico, Panama and Uruguay, which expressly adopt the prohibition of rejection at the border. *Cf. Law No. 26,165. General Law for Refugee Recognition and Protection*, enacted on November 28, 2006, Article 2 (Argentina); *Law No. 251 on the protection of refugees,* June 20, 2012*,* Article 4.II (Bolivia); *Law No. 20,430 - Establishes provisions on refugee protection*, promulgated on April 8, 2010, article 3 (Chile); *Decree No. 1,182 - Regulations for the application of the right of refuge,* of May 30, 2012, article 9 (Ecuador); *Immigration and Foreigners Law*, May 3, 2004, Article 44 (Honduras); *Law on Refugees and Complementary Protection*, of January 27, 2011, article 6 and *Regulation of the law on refugees and complementary protection,* of February 21, 2012, article 9 (Mexico); *Executive Decree No. 23,* of February 10, 1998, articles 53 and 82 (Panama); and *Law No. 18. 076 – Right to asylum and refugees,* published on January 5, 2007, article 12 (Uruguay). *Cf.* Advisory Opinion OC-21/14, *supra*, para. 210.

218 *Cf.* ECHR, *M.S.S. v. Belgium and Greece* [GS]. No. 30696/09. Judgment of January 21, 2011, para. 223, and *Hírsi Jamaa et al.* v. *Italy* [GS], No. 27765/09. Judgment of February 23, 2012, para. 129 and 135, and *Kebe et al. v*. Ukraine, No. 12552/12. Judgment of January 12, 2017, para. 74.

219 *Cf.* United Nations High Commissioner for Refugees (UNHCR), *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, published on January 26, 2007, *supra,* para. 35.

220 Committee against Torture (CAT), *General Comment No. 2: Application of Article 2 by the States Parties,* CAT/C/GC/2, January 24, 2008, paras. 7 and 16, and *J.H.A. v. Spain* (Communication No. 323/2007), UN Doc. CAT/C/41/D/323/2007, Opinion adopted on November 21, 2008, para. 8(2).

221 Committee against Torture (CAT), *General Comment No. 4: Implementation of article 3 of the Convention in the context of article 20*, *supra*, para. 10.

of territorial or personal jurisdiction, whether *de jure* or *de facto*. In short, the Court considers that the scope of protection against refoulement is not limited to the fact that the person is in the territory of the State, but also obliges States extraterritorially, provided that the authorities exercise their authority or control effective over such persons, as can happen in legations, which by their very nature are in the territory of another State with their consent.

189. In this regard, the Court notes that both the former European Commission of Human Rights and the United Nations Human Rights Committee have recognized that the principle of non-refoulement may be involved in the event that persons who have entered an embassy are handed over to the authorities of the territorial state.[222]

190. That is why refoulement, as an autonomous and encompassing concept, can cover various State conducts that imply placing the person in the hands of a State where their life, security, and/or liberty are at risk of violation due to persecution or threat, generalized violence or massive violations of human rights, etc., as well as where there is a risk of being subjected to torture or other cruel, inhuman, or degrading treatment, or to a third State from which it can be sent to one in which may run such risks (indirect return). Such conduct includes, among others, deportation, expulsion, or extradition, but also rejection at the border, non-admission, interception in international waters, and informal transfer or "rendition."[223] This affirmation is based on the very wording of Article 22(8) of the American Convention, which establishes that "in no case" can an alien be expelled or returned to another country; in other words it does not have territorial conditions but can include the transfer or the removal of a person between jurisdictions.

191. Indeed, in the case of *Wong Ho Wing v. Peru*, the Court stated that:

> […] the obligation to ensure the rights to life and to personal integrity, as well as the principle of non-refoulement, when there is a risk of torture and other forms of cruel, inhuman or degrading treatment or risk to the right to life, "is applicable to all methods of returning a person to another State, even extradition."[224]

192. Consequently, the principle of non-refoulement is enforceable by any foreign person, including those seeking international protection, over whom the State in question is exercising authority or is under its effective control,[225] regardless of whether he or she is on the land, rivers, or sea or in the air space of the State.[226] This provision includes acts carried out by immigration and border authorities, as well as acts carried out by diplomatic officials.

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222 *Cf*. European Commission of Human Rights, *W.M. v. Denmark,* No. 17392/90. Decision on admissibility of October 14, 1992, para. 1, and Human Rights Committee, *Case Mohammed Munaf v. Romania* (Communication No. 1539/2006), UN Doc. CCPR/C/96/D/1539/2006, opinion adopted on August 21, 2009, paras. 14(2) and 14(5).

223 *Cf.* Committee against Torture (CAT), *General Comment No. 4: Implementation of article 3 of the Convention in the context of article 20*, *supra*, para. 4. Said paragraph establishes that "for the purposes of this General Comment, the term 'deportation' includes, but is not limited to, expulsion, extradition, forced return, forced transfer, rendition, rejection at the border, interception operations (including those carried out in international waters) from a person or group of individuals from a State Party to another State."

224 *Case Wong Ho Wing v. Peru, supra*, para. 130, citing the Committee against Torture (CAT), *Case of Chipana v. Venezuela* (Communication No. 110/1998), UN. Doc. CAT/C/21/D/110/1998, opinion adopted on November 10, 1998, para. 6(2), and *Case of GK v. Switzerland* (Communication, No. 219/2002), UN. Doc. CAT/C/30/D/219/2002, opinion adopted on May 7, 2003, paras. 6(4) and 6(5). The European Court has ruled similarly. *Cf.* ECHR, *Case of Babar Ahmad et al. v. United Kingdom*, No. 24027/07, 11949/08, 36742/08, 66911/09, and 67354/09. Judgment of April 10, 2012, paras. 168 and 176.

225 In this same sense, the Inter-American Commission decided: "[t]he Commission does not believe, however, that the term "jurisdiction" in the sense of Article 1(1) is limited to or merely coextensive with national territory. Rather, the Commission is of the view that a state party to the American Convention may be responsible under certain circumstances for the acts and omissions of its agents which produce effects or are undertaken outside that state's own territory […]" and that "[t]his understanding of jurisdiction--and therefore responsibility for compliance with international obligations--as a notion linked to authority and effective control, and not merely to territorial boundaries, has been confirmed and elaborated on in other cases decided by the European Commission and Court." Inter-American Commission on Human Rights (IACHR), Inadmissibility Report No. 38/99, *Victor Saldano vs. Argentina,* March 11, 1999, paras. 17 and 19.

226 *Cf.* Advisory Opinion OC-21/14, *supra*, para. 219.

193. When Article 22.8 of the American Convention refers to expulsion or refoulement to "a country, regardless of whether or not it is his country of origin," does not only concern the State to which said person is being expulsed, returned, or extradited, but also to any State to which the person could later be expulsed, returned, or extradited.[227] In other words, it covers what has been called indirect refoulement.

194. From all of the above, it follows that, within the framework of the principle of non-refoulement, several specific obligations are required for the receiving State, under whose jurisdiction the person who has requested protection at a diplomatic headquarters is, regarding the evaluation of individualized risk and adequate protection measures, including those against arbitrary detention. In this regard, the Court recalls that "it is not sufficient that States merely abstain from violating this principle; rather it is imperative that they adopt positive measures."[228]

195. Thus, the Court considers that, within the framework of the American Convention, an interview of the person and a preliminary evaluation of the risk of refoulement are required. Indeed, this Court has already affirmed that:

> […] when an alien alleges before a State that she or he will be at risk if she or he is returned, the competent authorities of that State must, at least, interview the person, giving her or him the opportunity to explain her or his reasons for not being returned, and make a prior or preliminary assessment in order to determine whether this risk exists. If the risk is verified, she or he should not be returned to her or his country of origin or where the risk exists.[229]

196. Likewise, the Human Rights Committee has affirmed that it is not possible to extradite, deport, expel, or remove in any way a person from the territory of a State if there are sufficient grounds to believe that there is a risk of irreparable damage to their rights, and without first taking into consideration the person's allegations about the existing risk[230]. In other words, when an alien alleges to a State that she or he faces risk in the event of return, the competent authorities must, at least, interview the person and make a prior or preliminary assessment in order to determine whether this risk exists in the event of expulsion. Regarding the risk to the right to life and freedom of the alien, it is pertinent to clarify that this must be real, i.e. it must be a predictable consequence. In this regard, the State must carry out an individualized study to verify and evaluate the circumstances described by the person who asserts that she or he may suffer harm to her or his life or freedom in the country to which the State intends to return her or him– in other words, her or his country or origin – or that, if she or he is returned to a third country, runs the risk of being sent, subsequently, to the place where she or he runs that risk. If the person's account is credible, convincing and coherent as regards her or his probable situation of risk, the principle of non-refoulement should be applied.[231]

197. The Court considers that the host State must, therefore, take all necessary means to protect the person in the event of a real risk to life, integrity, liberty, or security[232] if the person is handed

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227 *Cf*. *Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 153, and Advisory Opinion OC-21/14, *supra*, para. 212. Similarly, the Committee against Torture (CAT), *General Observation No. 4: Implementation of article 3 of the Convention in the context of article 20*, *supra*, para. 2.

228 *Advisory Opinion OC-21/14,* supra*, para. 235, and Case of Wong Ho Wing v. Peru, supra, para. 128.*

229 Advisory Opinion OC-21/14, *supra*, para. 232. *See* also, *Case of the Pacheco Tineo Family v. Bolivia, supra*, para. 136.

230 *Cf.* Human Rights Committee, *Case of Jonny Rubin Natural v. Denmark* (Communication No. 1222/2003), UN Doc. CCPR/C/82/D/1222/2003, Opinion adopted on December 09, 2004, para. 11(3), and *Case of Jama Warsame v. Canada* (Communication No. 1959/2010), UN Doc. CCPR/C/102/D/1959/2010, Opinion adopted on September 1, 2011, para. 8(3).

231 *Cf.* Advisory Opinion OC-21/14, *supra,* para. 221.

232 *Cf*. EHRC, *Saadi v. Italy* [GS], No. 37201/06. Judgment of February 28, 2008, para. 125.

over or removed to the territorial State or if there is a risk that that State may, in turn, subsequently expel, return or extradite the person to another State where there is such a real risk.

198. The Court also considers that the legal situation of the person cannot remain in limbo or continue indefinitely.[233] Thus, the Court has recognized that, in cases different from that examined herein, that the person not only has the right not to be returned, but rather, this principle would make it compulsory for the State to act,[234] taking into account the purpose and objective of the rule. However, the fact that the person cannot be returned does not imply *per se* that the State must necessarily grant asylum at its diplomatic headquarters;[235] rather, other obligations subsist that impose the State to adopt diplomatic measures, including the request to the territorial State to issue a safe-conduct, or those of another nature that are under its authority and, in accordance with international law, to ensure the applicants the guarantee of conventional rights.[236]

199. Finally, the Court recalls that the duty of cooperation between States in the promotion and observance of human rights is an *erga omnes* rule, since it must be complied with by all States, and is binding in international law. Indeed, the duty to cooperate constitutes a rule of customary international law, crystallized in article 4(2) of Resolution 2625 of October 24, 1970 of the United Nations General Assembly, concerning "The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations," which was unanimously adopted by the Member States.[237] To this extent, the Court finds that, in accordance with the collective guarantee mechanism underlying the American Convention,[238] it is incumbent on all the States of the inter-American system to cooperate with each other to comply with their international obligations, both regional and universal.[239]

VI.
OPINION

200. For the reasons stated, in interpretation of Articles 1(1), 5, 22(7) and 22(8) of the American Convention on Human Rights and Article XXVII of the American Declaration of the Rights and Duties of Man,

THE COURT,

DECIDES

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233 Under this logic, the Inter-American Commission has considered that the prolonged confinement of persons in a place subject to diplomatic immunity constitutes a violation of the personal freedom of the refugee by the State and could be considered an excessive penalty. Inter-American Commission on Human Rights (IACHR), Report on the situation of human rights in Argentina, OEA/Ser.L/V/II.49, doc. 19, April 11, 1980, Chapter IV, The right to liberty, para. 4.

234 *Cf.* Advisory Opinion OC-21/14, *supra*, para. 236.

235 *Cf*. Committee against Torture (CAT), *Case of Seid Mortesa Aemei v. Switzerland* (Communication No. 34/1995), UN Doc. CAT/C/18/D/34/1995, Opinion adopted on May 29, 1997, para. 11.

236 *Cf*. *Mutatis mutandis*, *Caso Ilaşcu and others v. Moldova and Russia,* No. 48787/99. Judgment of July 08, 2004, para. 331.

237 In this order of ideas, the International Court of Justice considered that the attitude of the States in relation to Resolution 2625 should not be understood as "reiteration or elucidation" of the obligations established in the Charter of the United Nations itself, but acceptance of the rules contained therein, detaching from said norm the character of *iuris opinion* necessary for it to qualify such rule as customary. *Cf*. International Court of Justice (ICJ), *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America).* Judgment of June 27, 1986, para. 188.

238 *Cf. Case of the Constitutional Court v. Peru. Jurisdiction.* Judgment of September 24, 1999. Series C No. 55, para. 41, and *Case of González et al. ("Campo Algodonero") v. Mexico, supra*, para. 62.

239 *Cf. Case of Goiburú et al. v. Paraguay*, supra, para. 132, and *Case of La Cantuta v. Peru. Merits, Reparations, and Costs.* Judgment of November 29, 2006. Series C No. 162, para. 160.

unanimously that:

1. It is competent to issue this Advisory Opinion, under the terms of paragraphs 13 to 60.

AND IS OF THE OPINION

unanimously that:

2. The right to seek and receive asylum in the context of the inter-American system is enshrined as a human right to seek and receive international protection in a foreign territory, including under this expression refugee status in accordance with pertinent instruments of the United Nations or corresponding domestic legislation, as well as territorial asylum in accordance with the different inter-American conventions on said subject matter, under the terms of paragraphs 61 to 163.

3. Diplomatic asylum is not protected under Article 22(7) of the American Convention on Human Rights or Article XXVII of the American Declaration of the Rights and Duties of Man, so it must be governed by the interstate conventions that regulate it and the provisions of domestic legislation, in the terms of paragraphs 61 to 163.

4. The principle of non-refoulement is enforceable by any foreign person, including those seeking international protection, over whom the State in question is exercising authority or is under its effective control, regardless of whether he or she is on the land, rivers, or sea or in the air space of the State, under the terms of paragraphs 164 to 199.

5. The principle of non-refoulement not only requires that the person not be returned, but also imposes positive obligations on States, in the terms of paragraphs 194 to 199.

IAHR Court. Advisory Opinion OC-25/18 of May 30, 2018. Requested by the Republic of Ecuador.

Eduardo Ferrer Mac-Gregor Poisot
President

Eduardo Vio Grossi

Humberto A. Sierra Porto

Elizabeth Odio Benito

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri
Secretary

So ordered,

Eduardo Ferrer Mac-Gregor Poisot
President

Pablo Saavedra Alessandri
Secretary