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Report on the meeting to reflect collectively on the inviolability of diplomatic premises as a principle of international relations and its relationship to the concept of diplomatic asylum, held on April 30, 2021

(Prepared by the Department of International Law of the OAS)

1. Introduction

On April 30, 2021, within the framework of the Committee on Juridical and Political Affairs (CAJP), a meeting was held to reflect collectively on the inviolability of diplomatic premises as a principle of international relations and its relationship to the concept of diplomatic asylum.

The meeting was held in accordance with a mandate from the General Assembly contained in resolution AG/RES. 2959 (L-O/20) "International Law," by which it instructed the CAJP to hold, prior to the fifty-first regular session of the General Assembly, a meeting to reflect collectively on the inviolability of diplomatic premises as a principle of international relations and its relationship to the concept of diplomatic asylum, and to instruct the Department of International Law (DIL) to later prepare a report on its main outcomes and present it to the Inter-American Juridical Committee (CJI) (SEE LINK).

Based on that mandate, the DIL prepared the following report, which summarizes the main substantive points put forward at the meeting. For further information, links to the written presentations that were made available are attached to this report.

The agenda of the meeting was approved by the CAJP on March 18, 2021 (SEE LINK).

The meeting was initially addressed by the Chair of the CAJP, Ambassador Josué Fiallo, Permanent Representative of the Dominican Republic to the OAS; Ambassador Luz Elena Baños Rivas, Permanent Representative of Mexico to the OAS; and Dr. Luis García-Corrochano, Chair of the CJI. Subsequently, a dialogue was opened on the inviolability of diplomatic premises as a principle of international relations and its relationship to the concept of diplomatic asylum, in which the following guest speakers gave presentations:

a. George Rodrigo Bandeira Galindo, legal advisor, Ministry of Foreign Affairs of Brazil (Biography).

b. Íñigo Salvador Crespo, Attorney General of Ecuador and former rapporteur of the Inter-American Juridical Committee for the topic "Guidelines for further development of regulations on diplomatic asylum" (Biography).
c. Pablo Monroy Conesa, Assistant Legal Advisor "A," Secretariat of Foreign Affairs of Mexico (Biography).
d. Alonso Illueca, Associate Professor, Universidad Católica Santa María La Antigua, Panama (Biography).
e. María Teresa Infante, professor of international law, University of Chile, former President of the Chilean Society of International Law and of the Latin American Society of International Law (Biography).

This was followed by a dialogue among the delegations of the member states.

2. Remarks by the Chair of the CAJP

The Chair of the CAJP (see link) opened the meeting by thanking all the special guests, panelists, experts, and delegations present for their participation.

3. Remarks by the Permanent Representative of Mexico to the OAS

The Permanent Representative of Mexico to the OAS, Ambassador Luz Elena Baños Rivas (SEE LINK), indicated that that special meeting would address one of the fundamental pillars of diplomatic relations, namely the principle of inviolability, as well as its link to a concept that States had developed extensively in inter-American relations in the exercise of their sovereignty: diplomatic asylum.

In this regard, she alluded to the message that the president of the Inter-American Juridical Committee, Luis García-Corrochano, addressed to the CAJP at a previous meeting of the CAJP regarding exceptionality in the use of force, namely that the evolution of international law should be a matter of continuous consideration and review.

The Permanent Representative said that the friendly and peaceful coexistence of the countries that make up the international community could not be considered other than in a framework of unrestricted respect for international law. She recalled that the Vienna Convention on Diplomatic Relations had reached its sixtieth anniversary on April 18. The signing of that Convention had been a milestone in the development of diplomatic relations by codifying the basic regime for ensuring reciprocal relations between sovereign States, especially in exceptional situations. The participation of almost every State in the international community, the high degree of observance by the states parties, and the influence it exerted on the international legal order made the Vienna Convention on Diplomatic Relations the most successful international legal instrument of all time. She said that even those few countries that were not party to the Convention had incorporated it into their practice as an international custom, with the result that the treaty had universal scope. In that regard, she recalled that one of the major contributions of the Vienna Convention had been to codify the principle of

inviolability of diplomatic premises. That recognition facilitated relations between States as subjects of international law. Diplomatic privileges and immunities, including the principle of inviolability, were one of the earliest expressions of international law and they sought to ensure the appropriate development of such relations. At the same time, the principle of inviolability of the premises of diplomatic missions contained in the said Convention was a peremptory norm of international law that allowed no exceptions. The need for strict compliance with that principle was reaffirmed in 2012 by the ministers of foreign affairs of the OAS at their twenty-seventh meeting of consultation, and the resolution they adopted in that context established strict compliance by all States with the rules governing protection, respect, and inviolability of the premises of diplomatic missions and consular offices. That principle was fundamental for compliance with international law as the standard of conduct of States in their reciprocal relations. The ministers also rejected any attempt to imperil the inviolability of the premises of diplomatic missions and reiterated the obligation of all States not to invoke rules of domestic law to justify non-compliance with their international obligations.

Ambassador Baños indicated that diplomatic asylum was a corollary of the recognition of the inviolability of diplomatic premises and its exercise was based on compliance with treaty obligations and the principle of the legal equality of States. The sovereign right to grant asylum was correlative to international obligations for States and had its basis in the international system of laws, in addition to custom and State practice. The Permanent Representative of Mexico concluded her presentation by urging OAS member states to reject any act that impeded the guarantee of inviolability of the premises of diplomatic missions or their personnel, as it was an international obligation consistent with the principles of the OAS Charter, as codified in the 1954 Caracas Conventions on Diplomatic Asylum and Territorial Asylum, the 1933 Montevideo Convention, and the 1928 Havana Convention. Doing so, she said, honored a diplomatic tradition that saved the lives of people persecuted for political reasons, as Mexico has done with hundreds of people who had found shelter and solidarity, with whom it has established a deep bond that has united peoples and enriched cultures.

4. Remarks by the Chair of the Inter-American Juridical Committee

Dr. **Luis García-Corrochano**, Chair of the Inter-American Juridical Committee, began his presentation by noting that the meeting was a most timely opportunity to discuss two closely linked issues. The first concerned the inviolability of diplomatic premises. In that regard, he mentioned that a week earlier he had participated in an activity with several diplomatic academies to commemorate the sixtieth anniversary of the Vienna Convention on Diplomatic Relations which codified hundreds of years of diplomatic practice. He recalled that, though the inviolability of diplomatic premises had been codified in the Vienna Convention of 1815, it had codified an already existing international custom and extended it to the premises of the mission and to all forms of diplomatic communications between States. The second issue had to do with the exercise of the right to diplomatic asylum, an institution that had its origins in the rich tradition of American international law and in the high values that concerned protecting the well-being of people at risk. In that regard, he recalled that there

was a wealth of jurisprudence on both the right of asylum and the inviolability of diplomatic premises, in which American States have been directly involved.

He concluded by welcoming the fact that the General Assembly had decided to place these issues on the agenda of the CAJP so that this discussion might give rise to a specific mandate for the Inter-American Juridical Committee, enabling it to address the issue of diplomatic asylum in direct connection with protection and inviolability of diplomatic representations and to submit reports to the Organization aimed at updating the treatment of those two important issues.

5. Speakers' Presentations

Mr. George Rodrigo Bandeira Galindo, Legal Advisor to the Ministry of Foreign Affairs of Brazil and member of the Inter-American Juridical Committee (VER LINK), shared some initial thoughts on the inviolability of diplomatic premises as a principle of international relations and its relationship with the concept of diplomatic asylum. First, he addressed the inviolability of diplomatic missions, referring to two pronouncements of the International Court of Justice (ICJ) in the case of U.S. diplomatic and consular personnel in Tehran. The first of those was the judgment on provisional measures, in which the ICJ stated that there was no more fundamental prerequisite for the development of relations between states than the inviolability of diplomatic envoys and embassies and that nations of all faiths and cultures had observed specific obligations to that end. The second referred to its judgment on merits in which it declared that the principle of inviolability of diplomatic agents and the premises of diplomatic missions was one of the cornerstones of the long-standing regime concerning diplomatic law. Such decisions, he said, seemed to demonstrate that there was a hierarchy or at least a fundamental core of rules of diplomatic law in which the inviolability of mission premises was embedded.

He also mentioned that the rule of inviolability enshrined in Article 22 of the Vienna Convention on Diplomatic Relations (and a rule of customary law), was divided into three obligations. The speaker focused, because of its relevance, on the obligation contained in paragraph 1, which clearly reflected an obligation not to act not only for the agents of the State receiving the diplomatic mission, but indirectly also for any other public or private person in the territory of the receiving State. The inviolability in question extends to all parts of the mission, which also includes the residence of the head of the mission, in accordance with Article 1 (i) of the Convention. That rule had no exceptions, he clarified. He stated that during the discussions in the International Law Commission and at the United Nations Conference on Diplomatic Intercourse and Immunities in Vienna, attempts were made to establish a regime of exceptions or presumed consent of the head of mission for entry into such missions (in cases, for example, of public calamity), but that all proposals to that effect were rejected. Furthermore, he pointed out that if in 1961 there were doubts about the existence of exceptions to inviolability, international practice had evolved in the sense that such exceptions were not currently permitted under diplomatic law.

He pointed out that cases of violation of inviolability, in international practice, were systematically followed by formal protests. In general, international tribunals that had dealt with the matter also did not support exceptions to Article 22(1). Indeed, more recently, in 2020, the ICJ, in the Immunities and Criminal Procedures Case, held that the regime of immunities and inviolability were sovereign restrictions imposed on States receiving diplomatic missions. It was, therefore, a regime that guaranteed protection that affected the sovereignty of the State. On the other hand, the exception contained in Article 22(2) was a clear obligation to do but more specifically an obligation to prevent not only the violation of the obligation of inviolability, but also any "intrusion or damage", "disturbance of the peace" of the mission, or "impairment of its dignity." He further noted that the ICJ, in the case of the U.S. diplomatic and consular personnel in Tehran, held that the inaction of a State in the face of the invasion of diplomatic missions and consular offices by private individuals was a clear and serious breach of paragraph 2 of that article.

The speaker said that in *Boos v. Barry* the U.S. Supreme Court held that the disturbance of a diplomatic mission was measured by the criterion of whether the normal activities of the diplomatic mission had been or were about to be disrupted.

He also referred to diplomatic asylum, noting that during the work on the codification of international law (though not at the Vienna Conference) an attempt had been made to enshrine, within the rule on the inviolability of diplomatic missions, the possibility of granting diplomatic asylum. In that regard, he said that the granting of diplomatic asylum should always be understood in relation to Article 41 (1) of the Vienna Convention on Diplomatic Relations, which dealt with the duty of persons enjoying immunity to respect the laws and regulations of the receiving State and the duty not to interfere in the internal affairs of that State. That obligation extended to persons seeking asylum, who were also prohibited from interfering in the internal affairs of the receiving State.

He then went on to address the territorial context in which diplomatic asylum was granted. He said that outside Latin America, there was certain practice that underpinned a State's right to grant diplomatic asylum on a limited and temporary basis. In Latin America, treaties such as the Havana Convention of 1928, the Montevideo Convention of 1933 and the Caracas Conventions of 1954 had had a great impact in this regard. The existence of a regional custom on the subject varied depending on the subregional context in question, as indicated in the Asylum Case heard by the International Court of Justice in 1950, and in Advisory Opinion 25/2018 of the Inter-American Court of Human Rights.

In concluding his presentation, he recalled that the International Court of Justice had already offered a solution to the conflicts between alleged illegal granting of diplomatic asylum and the need to preserve the inviolability of diplomatic missions.

In the case concerning of *United States Diplomatic and Consular Staff in Tehran*, the International Court of Justice held that the rules of diplomatic law constitute a self-contained regime, in the sense that the response to violations of the Vienna Convention on Diplomatic

Relations was entirely limited to the remedies provided by that convention (such as the withdrawal of diplomatic status from a member of the mission or a declaration of persona non grata). He concluded by stating that the violation of the inviolability rule was not a remedy permitted by the Vienna Convention on Diplomatic Relations and indicated that that criterion had also been used in arbitration case law, citing the partial award of the Eritrea-Ethiopia Claims Commission, in which it was established that the possible reactions of the State hosting a diplomatic mission were limited to the reactions strictly permitted by the Vienna Convention on Diplomatic Relations in the event of an unlawful act.

Mr. Íñigo Salvador Crespo, Attorney General of Ecuador and former rapporteur of the Inter-American Juridical Committee for the topic "Guidelines for further development of regulations on diplomatic asylum" (SEE LINK), began his presentation by addressing the study of the intrinsic relationship between the inviolability of diplomatic missions and the traditional American international law concept of asylum. In his presentation he indicated that the subject could be approached from a doctrinal, jurisprudential, and even a positive-law point of view.

Thus, he began his presentation by indicating that the inviolability of diplomatic premises was a time-honored institution of international law, particularly diplomatic law, as old as diplomatic relations themselves. He recalled that such inviolability was a derivation of the inviolability of the person of the diplomatic agent as the representative of the sovereign, monarchs and, latterly, of States. That person was subject to a series of protections that granted them the necessary inviolability to carry out their mission. Any attack against that person represented a violation, damage, or impairment of the State they represented. From the protection of the diplomatic agent derived, then, the protection of the diplomatic premises that were the home of the diplomatic agent, the offices or premises where the diplomatic agent works, and their communications.

The speaker also referred to the Assange case, which involved access to undisclosed and confidential information, part of which was from diplomatic archives.

He also said that with the passage of time in some countries not only the premises of the diplomatic mission, but also even the entire district where the diplomatic mission was located had ultimately been covered by that inviolability. It was, thus, an institution of customary law that had been codified by the 1961 Vienna Convention on Diplomatic Relations and which gave rise to the possibility that even States that were not parties to the Convention might apply its precepts and give rise to new customary behaviors that would become part of the corpus of general international law.

He continued by stating that the concept of inviolability under Article 22 of the Vienna Convention did not admit any exceptions whatsoever. He indicated that at the time possible exceptions were studied, such as the right of asylum when it was exercised contrary to the proper use of the diplomatic mission; that is, when diplomatic premises were used to protect a person from legal action or the exercise of jurisdiction over one of its nationals by a State,

resulting in an improper use of the diplomatic mission. The speaker indicated that, fortunately, in the International Law Commission and in the Conference prior to the adoption of the 1961 Vienna Convention, no exception prevailed, and therefore that inviolability did not allow of any exception.

The speaker drew a distinction between diplomatic asylum and territorial asylum. He said that the inter-American conventions had traditionally spoken of territorial or political asylum and diplomatic asylum. However, the link between the principle of the inviolability of diplomatic missions and asylum applied exclusively to diplomatic asylum, and this was because political asylum occurred in the territory of the State of asylum, in which case the principle of inviolability of diplomatic missions need not be invoked. Thus, the relationship between the principle of inviolability and diplomatic asylum was obvious. A person who felt persecuted by their State or by a third State sought asylum in the premises of that diplomatic mission because they were inviolable, otherwise there would be no point in seeking the protection of another State if that diplomatic mission could be subject to the intervention of the territorial State. Therefore, diplomatic asylum was inconceivable without respect for the principle of the inviolability of diplomatic missions.

Asylum was a right of the State according to the conventions in force. However, the Inter-American Commission on Human Rights had a different view, arguing that it was a right of the asylum seeker, as if it were any other human right. The regional conventions state the opposite, i.e., that it was a right of the State and, therefore, a prerogative and, as such, could be exercised exclusively on the basis of the principle of the inviolability of diplomatic missions.

The speaker made reference to the British Diplomatic and Consular Premises Act of 1987, in relation to the Assange case. He indicated that at some point, when Mr. Assange took asylum in the Ecuadorian Embassy in London, a spokesperson for the British Foreign Ministry invoked the Diplomatic and Consular Premises Act of 1987, which provided certain limitations to inviolability. That law allowed the UK Secretary of State for Foreign Affairs to withdraw his acceptance of the premises as diplomatic premises if they were satisfied that to do so was permissible under international law. However, the law did not establish the parameters for determining the circumstance or circumstances in which international law would allow the withdrawal of the status of diplomatic premises. In that regard, he said that the exceptions to diplomatic inviolability in English law were primarily intended for the safety of the public, such as, for example, when a pandemic disease broke out in a diplomatic mission and it was important to intervene in the premises to prevent the epidemic from spreading. Since the premises had diplomatic status, that could not be done, unless the diplomatic status was withdrawn. A second case was for national security, but that concept was very loose since it might be a physical risk, the presence of an atomic bomb inside a diplomatic mission, or even for political security (for example, when a person was of particular importance in relation to an issue of high political sensitivity for the State that has granted diplomatic premises status to that building). Finally, it could also be a matter of urban or national planning.

The speaker referred again to the Assange case in relation to possible grounds for termination of the right of asylum, since the regional conventions on the right of asylum established the obligations of the State towards the asylee, but did not establish the obligations of the asylee towards the State providing such protection. He recalled in relation to that case that the Ecuadorian State adopted in October 2018 a special protocol for visits, communications, and medical care for the asylee. That had been a natural consequence of the prolongation in time of diplomatic asylum, as occurred in that particular case, in which Assange remained in the Ecuadorian diplomatic mission in London seven years, bearing in mind that it was merely an office facility different in terms of amenities from a diplomatic home. Thus, the Ecuadorian State established a series of conditions with which Mr. Assange had to comply in order to guarantee an appropriate coexistence and even for Mr. Assange's own protection. It was there that the possibility of lifting or terminating diplomatic asylum was introduced in the event that the asylee did not comply with one or more of those conditions, which later led to the Ecuadorian State lifting or terminating diplomatic asylum, whereupon Mr. Assange was apprehended by the British security forces.

The speaker concluded by noting that the right of asylum had evolved enormously. Bearing in mind that the first conventions dealing specifically with asylum dated back to 1928, the institution was on the verge of celebrating a century of its inclusion in Latin American regional treaty law. It was therefore undoubtedly a good time for the concept of asylum to be reappraised in light of the latest normative developments in international law.

Mr. Pablo Monroy Conesa, Assistant Legal Consultant "A" of the Secretariat of Foreign Affairs of Mexico, began his presentation by referring to the historical evolution of both concepts. Regarding inviolability of diplomatic premises, he said that the law on jurisdictional immunities of States and, in particular, diplomatic immunities had existed since international relations between States came into being, long before even the consolidation of the modern state after the Peace of Westphalia. He also indicated that the law of diplomatic immunities was developing mainly in the sphere of customary law; its rules were accepted as obligatory by the States and, in that way, it was evolving. Within this diplomatic law and, in particular, with regard to diplomatic immunities, the figure of inviolability was fundamental. The speaker commented that the Vienna Convention on Diplomatic Relations had the great virtue of codifying all those customary rules already recognized by States. Within the codification process, the notion of inviolability played a central role. Thus, all diplomatic privileges and immunities were intended to preserve the stability of relations between States, to secure and promote friendly relations, and to prevent conflicts from arising between them.

He stated that inviolability was enshrined in Article 22 of the Vienna Convention on Diplomatic Relations and that no exceptions were recognized to the inviolability of diplomatic premises, understood as not only the mission's offices, but also other premises designated as such by the accrediting State, specifically the residence of the head of the mission and the private homes of diplomatic agents, which would also enjoy immunity.

He recalled Article 41 (3) of the Vienna Convention which stated that the premises of the mission could not be used in any manner incompatible with the functions of the mission as laid down in that Convention or by other rules of general international law or by any particular agreements in force between the sending and the receiving State. The speaker said that the inviolability of premises implied an active obligation on the part of the receiving State and a passive obligation, i.e., the State could not enter such premises because they enjoyed inviolability. The active obligation meant that the State had to do everything in its power to protect those premises from intrusion, damage, or impairment of their honor or dignity.

From 1961 onwards, the law of jurisdictional immunities of States and, therefore, that of diplomatic immunities and privileges had continued to evolve and certain distinctions had been made as to the circumstances in which privileges and immunities were applicable. In that regard, he referred to the theory or doctrine of restricted immunity or restrictive doctrine of immunities whereby a distinction could be made between two types of acts: (i) official or sovereign acts of the State, called "*iure imperii*" and (ii) commercial acts, termed "*iure gestionis*" or acts that the State performed not in its official capacity. It was recognized that immunities for commercial acts might allow certain exceptions. However, the 2005 United Nations Convention on Jurisdictional Immunities of States and Their Property took up the evolution or new developments in the law on diplomatic immunities and, above all, embraced that restrictive doctrine of immunity. This Convention, which had not yet entered into force, but which from his country's point of view reflected the evolution of the law of immunities, recognized that the use made of the property and premises of diplomatic missions involved official acts. He noted that even the most recent treaty-related development regarding immunities was also applicable to diplomatic immunities and excluded possible exceptions to the principle of the inviolability of diplomatic premises. Thus, the inviolability of diplomatic premises was a rule that was well founded in treat-based and customary law and admitted no exceptions.

Regarding asylum, the speaker said that it was a concept that has been developed mainly in the inter-American sphere. As early as 1625, Hugo Grotius spoke of the possibility of diplomatic delegations or representations of legal entities granting asylum, but not yet States. Regarding its codification, he cited the 1928 Havana Convention, which only enunciated certain minimum understandings that States had regarding its the applicability of asylum. Subsequently, in 1933, in Montevideo, rules governing asylum were further developed. But it was in 1954, with the adoption of two conventions, namely the Convention on Territorial Asylum and the Convention on Diplomatic Asylum, that we arrived at the concept of diplomatic asylum as we know it today and which is recognized by a good many of the countries of the Hemisphere. Although the two figures have come into some conflict, Mexico is of the opinion that such a conflict should not occur at any time. Thus, Mexico considered that the concept of diplomatic asylum was based on the idea that the person finds refuge and protection in diplomatic premises and takes advantage of the concept of inviolability, which exists regardless of whether or not asylum has been granted. There are sufficient elements to believe that in certain cases the granting of asylum, as a prerogative of the asylum-granting State, might be considered a diplomatic function. This is the case when

both the sending and the receiving State recognize asylum and are parties to instruments that envisage it, or when there was an agreement between the two States, or when the receiving State had not objected to asylum.

He pointed out that the last time regulations were adopted on asylum was in 1954, and since then there had not been many judicial precedents regarding political asylum in the form of diplomatic asylum. In that regard, perhaps the Haya de la Torre Case or the Asylum Case (Colombia v. Peru) could be the case that could shed the most light from a jurisprudential point of view, since it predated the Caracas Conventions of 1954.

He said that this was a concept that was be worth reflecting on further with the purpose of strengthening it, since it was a fundamental institution and its observance was mandatory. In addition, he urged that the concept be reviewed taking into account the legal interests it sought to protect, which were the rights to life and humane treatment of persons who might be suffering political persecution. He also recalled the Meeting of Consultation of Ministers of Foreign Affairs of the OAS in 2012, where the validity and importance of the inviolability of diplomatic premises was reiterated.

He concluded by saying that, if there was a dispute between the asylum-granting State and the territorial State regarding the correct granting of asylum, that could be resolved by other means. If the dispute was that the inviolability was perpetuating a situation of impunity, there were tools that the Vienna Conventions on diplomatic and consular relations provided for that purpose. In any case, no interpretation could be accepted whereby inviolability might become less effective or should not be fully respected.

Mr. Alonso Illueca, Associate Professor at the Universidad Católica Santa María La Antigua in Panamá (SEE LINK) indicated that the principle and rule regarding the inviolability of diplomatic missions was intrinsically linked to the concept of diplomatic asylum.

While the inviolability of diplomatic missions had been consolidated as a universal customary rule codified in Article 22 of the 1961 Vienna Convention, the debate as to the scope and content of diplomatic asylum as a universally accepted rule remained unresolved. In the best of cases, it could be said that, as regards diplomatic asylum, we are dealing with a treaty-based and customary rule of a regional nature, applicable to the Latin American sphere.

Since the seventeenth and eighteenth centuries, the founders of international law have analyzed this normative interaction between the inviolability of missions and diplomatic asylum. Hugo Grotius was of the position that the inviolability of diplomatic missions should be respected and that the institution of asylum should satisfy a series of special requirements. In addition, the thesis of the extraterritoriality of diplomatic missions was gaining traction among a large number of States at that time, thus generating practices such as “franchise du quartier” that not only excluded diplomatic missions from the jurisdiction of the receiving state, but also excluded the entire neighborhood or suburb where they were located. In response to this, Emmerich de Vattel developed a slightly more intrusive position: he argued

that the inviolability of the mission ceased the moment it was used to provide asylum to a criminal.

The speaker indicated that by the middle of the 20th century the extraterritoriality thesis would be rejected by the Berlin Supreme Court of Restitution as an "artificial legal fiction" in the case of *Tietz et al. v. Belgium*.

Although in 1928, the Pan American Union proposed one of the first codification efforts regarding privileges and immunities of diplomatic agents, one of the most significant developments in relation to the subject that concerns us today was the draft convention prepared in 1932 by the Harvard Research in International Law. That draft would be used by the International Law Commission of the United Nations in the travaux préparatoires for the 1961 Vienna Conference, which would conclude with the adoption of the Vienna Convention on Diplomatic Relations.

He also explained that the Harvard draft included, in negative terms, the concept of diplomatic asylum in the section on inviolability of diplomatic missions. In 1957, in the midst of the discussions on the Harvard Draft that were taking place in the International Law Commission, one of its members, Gerald Fitzmaurice, even proposed establishing within what would become Article 22 of the 1961 Convention a mandatory mechanism for the surrender of persons who sought asylum in a diplomatic mission. That procedure consisted of the receiving State proving that the person in question was accused of ordinary crimes. The only exception to the rule, according to Fitzmaurice, would be when the offense or crime charged was political in nature.

He also mentioned that another member of the Commission, Mr. François, would object to the inclusion of the issue of diplomatic asylum in the draft Convention, since in his opinion, if the International Law Commission did so, it would be acting beyond its legal authority, since the mandate from the Sixth Committee and the United Nations General Assembly limited it to consider only the privileges and immunities of diplomatic agents and did not include the subject of diplomatic asylum.

He said that the majority of the members of the Commission agreed with François, and so the issue of diplomatic asylum was excluded from the draft Convention, but not without first reaching the understanding that the fact that a diplomatic mission did not comply with the rules applicable to diplomatic asylum did not give the receiving State the right to enter the mission.

In the light of these developments, the Vienna Conference of March 2 to April 14, 1961, whose final product, the Vienna Convention on Diplomatic Relations, codified in its Article 22, the current concept of the inviolability of diplomatic missions, which has an "unqualified" character. This meant that there was no exception to the rule of inviolability of diplomatic missions and the receiving State was not allowed to make a judgment as to exceptional circumstances that would allow it to transgress that inviolability. This has

translated, in practice, into strict obedience of the rule of inviolability, even in extraordinary circumstances.

He stated that such was the case of the events that took place at the Libyan Embassy in the United Kingdom in 1984, when, after the murder of a London Metropolitan Police officer, Yvonne Fletcher, by shots fired from the Libyan Embassy, the United Kingdom opted to respect inviolability and apply the remedies established in the same convention, consisting of a declaration of persona non grata and a breaking of diplomatic relations.

He stated that the unrestricted respect for the rule establishing the inviolability of diplomatic missions was widely supported by the jurisprudence of international courts. Some States had attempted to override the inviolability of missions by invoking Article 41 of the 1961 Convention, which states that the premises of the mission must not be used in a manner incompatible with the functions of the diplomatic mission.

He said that, according to the ICJ, in the case of the United States Diplomatic and Consular Staff in Tehran (United States v. Islamic Republic of Iran), even in cases of espionage and interference in the internal affairs of the receiving State, the latter must limit itself to the measures pre-established in the Convention and refrain from measures of force.

Similarly, the arbitration tribunal constituted to deal with the mutual claims between Ethiopia and Eritrea ruled that allegations of hostile activity within the mission could not justify Ethiopia's forcible entry, search and seizure of the Eritrean Embassy premises.

According to him, the foregoing, together with the presentations of those who preceded him, made quite clear the foundations on which the international rule concerning the inviolability of diplomatic missions was built.

He indicated that the concept of inviolability as established in the Vienna Convention of 1961 consisted of the fact that agents of the receiving State could not enter the premises of the diplomatic mission without the consent of the head of the mission.

Therefore, a positive and special obligation is imposed to adopt necessary and appropriate measures to protect such premises against any type of intrusion or damage, as well as to avoid disturbing the peace of the mission or impairing its dignity. The prohibition against any kind of intrusion, search, requisition, seizure or enforcement measure extends, in one form or another, to the premises of the mission, its furnishings and other property (including files and documents), as well as to the mission's means of transportation.

Furthermore, he stated that the inviolable nature of all diplomatic missions presupposed that, regardless of the considerations of the receiving State, the decision to allow a person to enter the premises of the mission was covered by the principle of the unqualified inviolability of the mission and, in practice, they would enjoy diplomatic asylum or, in the case of those States that did not recognize that concept, temporary and provisional refuge.

This, in turn, invited reflection on the possibility of de facto diplomatic asylum, based solely on the entry of a person to a given diplomatic mission and on its inviolability.

He commented that this seemed to have been the criterion of the ICJ in its decisions in the Víctor Raúl Haya de la Torre Case. By decisions he was referring to the 1950 case concerning the right of asylum, the subsequent request for interpretation, and the 1951 Haya de La Torre case. Although the Court ruled, in the case concerning the right to asylum, that the asylum accorded to Haya de la Torre had not been granted in accordance with the 1928 Convention, the Court, in its decision in the Haya de la Torre case, declared that Colombia was not obliged to surrender him, even though the asylum, according to the Court itself, should have been terminated following its first decision.

Thus, despite the apparent contradiction of the rulings, the Court recognized the inviolability of the Colombian Embassy and the independence of those who entered and remained in it.

He concluded his presentation by indicating that emblematic cases outside the Hemisphere, such as that of Cardinal József Mindszenty, who remained for 15 years in the U.S. Embassy in Budapest, Hungary, or the case of the Durban Six, who entered the British consulate in that city to escape persecution by the apartheid regime, could be useful in the dialogue that the delegations of the member states would hold in the following days.

Ms. Maria Teresa Infante, Professor of International Law at the University of Chile and former President of the Chilean Society of International Law and of the Latin American Society of International Law (SEE LINK), noted that asylum was a general practice of protection granted in a diplomatic mission or in premises with diplomatic status. She explained that this practice, though controversial and often disputed, had endured over time. She also pointed out that it was not unusual for States to accord the status of "guest" to a person who from the point of view of diplomatic asylum could have the characteristics of being a protected person under that institution, but who was not given such treatment in order to avoid the consequences of its granting. Likewise, diplomatic asylum and international law were related through elements that were already consolidated and others that were still in the development phase. Some authors even maintained that asylum was a political rather than a legal institution, a thesis that, though not shared by the speaker, was used by the ICJ in some considerations in its rulings in the Haya de la Torre cases.

She also said that a look at diplomatic asylum from the perspective of general international law was useful because it helped to gain a better understanding of its nature, foundations, and purposes. Hence the importance of its specificity in Latin America.

The speaker said that the practice of asylum had evolved further in the Hemisphere for historical and legal reasons and that had contributed to treaty-based developments, helping to strengthen diplomatic relations and contributing to a more peaceful relationship among the States of the region. She also referred to the report of the Secretary General of the United

Nations in 1975 on the subject, a report of which the elements had not changed, in spite of the time that had elapsed. (UN General Assembly, *Question of Diplomatic Asylum: Report of the Secretary-General*, 22 September 1975, A/10139 (Part II), (https://www.refworld.org/docid/3ae68bf10.html [last accessed May 5, 2021].

The basis for exercising diplomatic asylum in international law can be analyzed from three different perspectives: (i) extraterritoriality, a fiction that was replaced in general international law by the development of the inviolability of those premises that are attached to the diplomatic function; (ii) inviolability, as a basis for its granting, and the obligation to respect it; and (iii) humanitarian considerations and protection of human rights.

The speaker explained that in order to assess whether diplomatic law was the key to explaining diplomatic asylum, it was necessary to examine diplomatic asylum in the light of international law, taking into account various areas that concurred or might have an impact on the analysis of the issue. Thus, for example, she indicated that the inviolability of diplomatic premises and immunities were inherent to the diplomatic function and the status of the premises necessary to exercise asylum (diplomatic and consular premises, warships, and others) when there was no specific source supporting asylum, such as a treaty. Furthermore, she indicated that without those immunities asylum would lack the necessary guarantees of separation of the spheres of control of the receiving State and the asylum-granting State. In that respect, inviolability had several components, among them, the non-entry to the premises of the mission by the receiving State. Likewise, there were also opinions in favor of self-defense in cases of extreme urgency, which had been proposed and also challenged.

The speaker indicated that Article 22 (1) of the Vienna Convention on Diplomatic Relations was the main provision governing the issue. It provided that the premises of the mission were inviolable and that agents of the receiving State could not enter them without the consent of the head of the mission. Article 22 (2) stipulated the obligation of the receiving State to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity. Likewise, Article 22 (3) stated that the premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution. She also referred to a very recent judgment of the ICJ (Equatorial Guinea v. France of December 11, 2020), where the French State disputed before the Court, the status of premises supposedly attached to the diplomatic and consular functions of a State.

She then commented on the humanitarian basis for seeking asylum and the protection of fundamental human rights in the face of the comprehensive failure of a State's internal legal system. To that extent, the issue's analysis should include an examination of an institution that also obliged the asylum-granting State to observe certain duties, such as non-refoulement. That component of asylum was admitted by the ICJ in a judgment in 1951,[1/] even though asylum had been granted irregularly. The ICJ's decisions on the Asylum Case and Haya del

1. Haya de la Torre Case, Judgment of June 13, 1951, ICJ. Reports 1951, p. 81.

Torre were,[2/] in any event, insufficient to explain the basis and scope of the institution. In that regard, the ICJ concluded that the asylum should be terminated but that the Colombian Government was not obliged to comply with this obligation by turning over the asylee to the Peruvian authorities.[3/] The Court added that there was no contradiction between those two proposals, because there were other ways in which the asylum could be ended besides surrender.[4/] The Court declined to offer practical recommendations on how to end the asylum and recommended that the parties (Colombia and Peru) find a satisfactory practical solution, based on comity and good neighborliness.

Regarding the relationship between diplomatic asylum as an institution that fulfilled analogous purposes with those of territorial asylum in general, without forgetting the substantive differences between the two, it could be contended that the former was directly linked to the humanitarian argument and the protection of fundamental human rights amid a comprehensive failure of the internal legal system of a State. To that extent, the issue's analysis should include an examination of an institution that also obliged the asylum-granting State to observe certain duties, such as non-refoulement.

The speaker then referred to the opinion of international courts such as the Inter-American Court of Human Rights' Advisory Opinion OC-25/18 of May 30, 2018, where the Court had indicated that diplomatic asylum was granted under international conventions, but had also been granted invoking the need to protect humanitarian content. Although diplomatic asylum was not protected by Article 22 (7) of the American Convention on Human Rights or Article XXVII of the American Declaration of the Rights and Duties of Man, its granting could nevertheless be governed by the provisions of domestic legislation and by the inter-State conventions that regulated it. Thus, 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. This is understood as the obligation to respect its granting, but not to confer asylum status in every case.

She concluded by highlighting the legal value of diplomatic asylum as a temporary protection, indicating that it was a specific protection. Its foundations were based on treaty law and on the exercise of forms of protection of the human person in situations of emergency (urgency) and in objective conditions of absence of the rule of law and instances of serious disruption of institutions. In this sense, inviolability was an essential condition for the exercise of diplomatic asylum and the law applicable to diplomatic relations. That explained its nature, scope, and limitations, as well as the elements in common with other forms of protection, including those arising from non-political persecution that might be linked to political activities, such as crimes against humanity or genocide. It was within the framework of those considerations that the granting of diplomatic asylum could give rise, whether with or without due cause, to discussions between the States involved, when in the opinion of one of them, the

2. Colombian-Peruvian asylum case, Judgment of November 20, 1950, ICJ. Reports 1950, p. 266.
3. Haya de la Torre Case, Judgment of June 13, 1951, ICJ. Reports 1951, p.82 and operative part.
4. *Ibid.*

conduct of the other did not conform to the requirements of international law. Such disputes should be resolved in accordance with the resolution mechanisms in effect and taking into account both diplomatic law and the law pertaining to diplomatic asylum itself.

6. Dialogue among the delegations of member states

The **United States** delegation stated that many OAS Member States are not a party to the 1954 OAS Convention on Diplomatic Asylum and do not recognize the practice of diplomatic asylum as a matter of international law. The delegation noted that, as experts have pointed out, the United States has extended temporary refuge in rare exceptional circumstances at its diplomatic missions to persons facing grave and imminent danger. It stressed that the granting of asylum is not recognized as a diplomatic function under the Vienna Convention on Diplomatic Relations or customary international law. It concluded by stating that using Embassies or other diplomatic missions as safe havens for nationals of the host country could give rise to accusations of violating the provisions of the Vienna Convention that prohibit diplomatic personnel from interfering in the internal affairs of the host country.

The delegation of **Mexico** (SEE LINK) said that it was important to reiterate the humanitarian nature of diplomatic asylum. It recalled that the Inter-American Court of Human Rights, in its Advisory Opinion OC-25/18, "The Institution of Asylum, and Its Recognition as a Human Right under the Inter-American System of Protection," had stated that diplomatic asylum was a humanitarian practice the purpose of which was to protect fundamental rights of the individual in the face of an imminent threat. In that opinion the Court recognized that individuals had sought asylum in diplomatic missions for centuries, and States, in their turn, had granted some form of protection to individuals persecuted for political reasons or facing an imminent threat to their life, liberty, security, or well-being. The power to grant diplomatic asylum was a sovereign power of States. That statement demonstrated the relevance that Mexico attached to the exercise of that sovereign prerogative that had allowed it to save the lives of hundreds of persecuted people.

The representative of Mexico emphasized that those considerations reflected the practice that some American States had adopted for decades in relation to the concept of diplomatic asylum. The spirit of protection that surrounded diplomatic asylum and the actions that had been taken as a result were thus often a source of pride for the Americas region and particularly for Mexico, which had traditionally been a land of asylum and refuge for the politically persecuted. In 1973, around 10,000 people were received in 25 diplomatic missions and more than 100 sanctuaries created specifically for that purpose in Chile. Likewise, in Managua, between 1977 and 1979, thousands of people sought asylum at the diplomatic missions of Costa Rica, Colombia, Mexico, Panama, and Venezuela, on which occasion Mexico alone granted political asylum to more than 700 people.

The Mexican delegation emphasized that examples such as these and many others honored those who granted this respectable humanitarian practice, which was one of the best expressions of Mexican diplomacy. It mentioned that, though diplomatic asylum has been

developed with particular intensity in Latin America, it had been practiced in Africa, Asia, and even at European embassies in the Hemisphere. Thus, diplomatic asylum had played a very important role in situations of political instability and served as a preventive mechanism when violence erupts. On the other hand, no country, even those that were not party to an agreement on diplomatic asylum, was exempt from an asylum request at their diplomatic missions.

The granting of diplomatic asylum was an important, cherished practice of Mexican foreign policy, widely recognized for well over a century. That is why, the delegation said, the Mexican tradition had always been favorable to the protection of people persecuted for their political convictions and why Mexico had ratified the four conventions on asylum that existed in the Americas. The delegation also emphasized that the Mexican Government had granted diplomatic asylum to politicians, artists, scientists, intellectuals, and social activists from many of the States that made up the OAS, many of whom, after being granted political asylum, had returned to their countries, positively transforming their societies, while many others had settled in Mexico and chosen it as their second homeland. He emphasized that, thanks to diplomatic asylum, the arrival of hundreds of political or territorial asylum seekers had enriched Mexico in various fields and in some of them had contributed to solid periods of scientific and cultural renaissance, in which prominent asylum seekers had shared their knowledge, experience, wisdom, and example of defense of their political ideas. Argentines, Bolivians, Brazilians, Colombians, Chileans, Dominicans, Ecuadorians, Guatemalans, Haitians, Hondurans, Nicaraguans, Panamanians, Paraguayans, Peruvians, Salvadorans, Uruguayans, and Venezuelans had coexisted with Mexicans and illuminated their horizons with notable contributions to Mexico's development. Their presence had been very fortunate, as had that of those who arrived from other continents, especially thousands of Spanish republicans. The human experience produced by their presence and been very valuable and highly acknowledged.

The delegation of Mexico said that the concepts of inviolability of diplomatic premises and diplomatic asylum were widely developed in inter-American law and indivisibly linked. However, there was a clear imbalance between the two notions in terms of their international legal recognition and, consequently, the feasibility for States to provide protection to those persecuted in the exercise of a sovereign right. The Mexican mission stated that the Inter-American Court of Human Rights had found that the granting of diplomatic asylum and its scope must be governed by the inter-State treaties that governed it and the provisions of domestic law. However, it seemed indisputable that the Latin American tradition of asylum was also on its way to becoming an international custom since, as experience showed, all States were susceptible to granting diplomatic asylum based on the principle of inviolability of diplomatic premises. The delegation also said that the humanitarian protection provided by diplomatic asylum should be sufficient reason to generate consensus on its recognition in the international community. It was in that spirit that Mexico had encouraged its consideration and discussion in that forum and in the Inter-American Juridical Committee, the body that would receive the conclusions of that meeting in order to continue with its technical, legal, and humanistic analysis.

The delegation concluded by underscoring the importance of the issue for saving the lives of people in danger and once again requested the support of member states to emphasize its nature as one of the best inter-American practices.

The delegation of **Panama** (SEE LINK) reiterated its country's deep respect for the standards of international law, as well as its recognition of the Vienna Convention and the principle of inviolability of diplomatic missions without any exceptions.

The delegation of **Ecuador** (SEE LINK) mentioned that its country had signed and ratified most of the international instruments that made up the *corpus iuris* of human rights at the universal and regional levels, as it was party to the Conventions on Asylum of Havana (1928), Political Asylum of Montevideo (1933), and Diplomatic Asylum of Caracas (1954), in addition to having recognized the United Nations Declaration on Territorial Asylum of 1967. More recently, in March 2021, Ecuador had reformed its organic law on human mobility by incorporating definitions of the two types of asylum: diplomatic and territorial. The delegation also mentioned that, in light of Advisory Opinion 25/18 of the Inter-American Court of Human Rights, in response to a consultation made by Ecuador on August 18, 2016, on the institution of asylum in its various forms and the legality of its recognition as a human right of all persons in accordance with the principle of equality and non-discrimination, Ecuador echoed the proposal of the former Ecuadorian rapporteur of the Inter-American Juridical Committee, Dr. Íñigo Salvador, in his document "Guidelines for further development of regulations on diplomatic asylum." In that advisory opinion, the Inter-American Court considered that diplomatic asylum was not protected by Article 22 (7) of the American Convention on Human Rights or Article XXVII of the American Declaration of the Rights and Duties of Man and must, therefore, be governed by the inter-State treaties that governed it and provisions of domestic law.

The delegation of Ecuador referred to the challenges associated with diplomatic asylum in view of the limitations that its practice had imposed on diplomatic missions governed by the provisions of the Vienna Convention on Diplomatic Relations, as well as possible interference in the jurisdiction or internal affairs of the State in which the asylum-granting diplomatic mission was located. According to the delegation, that implied a necessary review of the scope of diplomatic asylum, its permanence, and its purpose vis-à-vis the principles of non-refoulement versus non-interference in the affairs of the State. In that regard, the delegation emphasized that the Latin American tradition of asylum had frequently applied that concept with timely responses from the requested State, which was why, as the former rapporteur of the Inter-American Juridical Committee had noted, the legal concept of asylum required further comprehensive development. Therefore, it would be advisable for that body to review the scope of the provisions of international law, the practice of the principle of conventionality, the territoriality of the law and international conventions for the application of asylum, in particular, diplomatic asylum (especially the lack of regulation on the grounds for termination of diplomatic asylum, particularly with reference to the conduct and obligations of the asylee).

The delegation of Ecuador echoed the statement of the former rapporteur of the Inter-American Juridical Committee in the sense that there remained a need for regulation on how to reconcile in each specific case the need for protection in the face of an irrefutable risk of violation of a person's rights in light of the principle of non-refoulement and the core principles of public international law and diplomatic relations referred to above. He ended, saying that Ecuador believed that legal work should be encouraged that incorporated the experiences of the States of the region and concluded in a characterization of asylum with a human rights vantage point of protection for the individual whose life could be in danger, all from a general perspective.

The delegation of the **Dominican Republic** (SEE LINK) said that inviolability of diplomatic premises was traditionally admitted both in the practice of States and in international doctrine and jurisprudence. Thus, the Vienna Convention on Diplomatic Relations of April 18, 1961, governed relations between States and the establishment of permanent diplomatic missions and established in Article 22 that the premises of the mission were inviolable; that agents of the receiving State could not enter them without the consent of the head of the mission; and that the receiving State had a special obligation to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity. In that regard, the delegation highlighted the Dominican Republic's absolute respect for the principle of inviolability of diplomatic premises and rejected any attempt to undermine that principle. It indicated that it was essential for States to comply with the rules governing protection, respect, and inviolability of the premises of diplomatic missions and consular posts, which had been codified in the Vienna Convention.

Asylum was a concept that had historically served to safeguard the integrity of asylum seekers and been respected by the Dominican Republic. Asylum had its basis in the American Declaration of the Rights and Duties of Man, adopted at the IX International American Conference in April 1948, and in the Declaration on Territorial Asylum, adopted by the United Nations General Assembly in its resolution 2312 (XXII) of December 14, 1967, which recognized that the grant of asylum by a State to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights was a peaceful and humanitarian act and that, as such, it could not be regarded as unfriendly by any other State. Finally, the delegation also mentioned the Convention on Diplomatic Asylum adopted in Caracas on March 28, 1954, among others.

The delegation said that the Dominican Republic, like the vast majority of member states, had witnessed the sad reality that people experienced when they had had to resort to diplomatic asylum for reasons to do with their opinions and ideologies. Asylum has allowed a number of valuable citizens to safeguard their lives and further advance their political and social vision by returning to their country of origin. Finally, it reiterated that both inviolability of diplomatic premises and political asylum were established in the instruments of international law to which most of the countries of the Hemisphere were signatories and that they must be respected since they guaranteed protection, shelter, and assistance to those who had fled their countries.

The **Canadian** delegation stated that Canada is not a party to the OAS Convention on Diplomatic Asylum and that it believes that no general right of asylum on diplomatic premises is recognized in contemporary international law. While certain States recognize the right of diplomatic asylum among themselves, it is a regional practice, and it is not an accepted norm of State practice recognized by the international community as a whole and consequently it is not a practice sanctioned by general international law.

The Canadian representation indicated that the Canadian policy related to so-called diplomatic asylum is to follow the generally accepted principle of international law and therefore only to grant protection in Canadian diplomatic premises for purely humanitarian reasons. This protection is granted only in exceptional cases, where life, liberty, or physical integrity of the individual seeking protection are threatened by violence against which local authorities are unable or unwilling to offer protection. This protection is extended for reasons of humanity and is done unilaterally. Canada does not recognize any rights of individuals to have such protection, because it is the duty of diplomatic representatives of the accrediting State to respect the laws of the receiving State and not to interfere in the international affairs of that State. Canada applies the rule respecting the granting of humanitarian protection in circumstances that are closely circumscribed. Likewise, protection by Canadian diplomatic missions for humanitarian reasons is only accorded to individuals whose lives, liberty, or physical wellbeing are in imminent danger under circumstances of violent or unstable nature.

The Canadian representation concluded by stating that Canada does recognize that situations can arise from time to time whereby an individual, Canadian citizen or otherwise, is in imminent danger of physical harm or loss of life or liberty, because generally accepted standards of justice and social order maybe absent. It is in this circumstances that a temporary safe haven on Canadian premises may sometimes be granted.

The delegation of **Argentina** ratified the historical principles of its foreign policy with respect to the international conventions it had signed and ratified, the humanitarian value of the institution of asylum, and the sovereign inviolability of diplomatic premises.

The delegation of **Brazil** (SEE LINK) said that the inviolability of diplomatic premises was the oldest rule in relations between States and, as Brazilian doctrine taught, it was considered the foremost of diplomatic immunities. The delegation indicated that collective reflection on the legal status of diplomatic premises was timely, as the sixtieth anniversary of the Vienna Convention on Diplomatic Relations, a fundamental source of public international law, was being celebrated. However, it should be noted that that convention did not deal with asylum.

The delegation of Brazil recalled that the doctrine stated that the application of asylum was conditional upon compliance with two articles of the Vienna Convention: (i) Article 22, which dealt with the inviolability of diplomatic premises, without exception; and (ii) Article 41 (1), which established that without prejudice to their privileges and immunities, all persons

enjoying them were required to respect the laws and regulations of the accredited State and had an obligation not to interfere in the internal affairs of that State.

The delegation of Brazil stated that it could be questionable whether a diplomatic mission could indefinitely grant asylum to someone whose surrender was necessary for the enforcement of local law. However, even in cases where asylum was wrongly granted, there was, nevertheless, a doctrinal understanding that the principle of inviolability of diplomatic missions remained unchanged.

The delegation expressed that the institution of diplomatic asylum should be analyzed from a regional perspective, as it was possibly the best-defined example of a Latin American regional custom. The issue was addressed in three inter-American conventions, which contained specific and, to a certain extent, complementary rules: (i) the Havana Convention of 1928, which established the conditions to be observed, namely, the existence of urgency, the need for immediate communication to the local foreign ministry, the request for guarantees for the asylee to leave the country, and departure from the country; (ii) the Montevideo Convention of 1933, which required that the asylee must have committed a political crime, that the right of asylum be linked to the nationality of the individual, and prohibited the granting of asylum to those persecuted for common crimes; and (iii) the Caracas Convention of 1954, which filled gaps in the previous conventions regarding urgency, qualification, and termination of asylum, especially with regard to the granting of safe-conduct to the asylee.

With specific reference to diplomatic missions, the Brazilian delegation quoted Celso de Albuquerque Mello, who stated that the government from which the asylee was fleeing had a duty under international law to protect the diplomatic missions located in its territory, so that they were not harassed for having granted asylum to certain persons. However, in addition to those obligations, the territorial State had a right that was of paramount importance to it in this matter: the right to prevent from outside the mission, the entry and exit (the latter, absent safe conduct) of the asylee from the embassy. The territorial State could require that the asylee be expelled from the country, and for that purpose it had to grant safe conduct and the respective guarantees.

The delegation of Brazil pointed out that it seemed clear that the granting of diplomatic asylum to a person whom the accrediting State considered politically persecuted could not be regarded as a use of the mission's location in a manner incompatible with its functions. It stated that there can therefore be no legitimate departure from the general rule of absolute inviolability of diplomatic missions, especially in the regional context and in cases where the asylee complied with their duty to refrain from political activities during the period of asylum.

The delegation of **Colombia** (SEE LINK) reiterated its support for the principles of international law relating to the inviolability of the premises of diplomatic missions, consular posts, and international organizations, as reflected in the Vienna Convention on Diplomatic Relations –particularly in Articles 22 and 44 (1)– and in the Vienna Convention on Consular Relations, as well as other relevant instruments. It also reaffirmed that such principles and

standards constituted fundamental rules for ensuring peaceful coexistence among all the countries that made up the international community. The delegation indicated that its State complied with its international obligation to protect the premises of diplomatic and consular missions, in light of the respective conventions and other international instruments on the matter.

The Colombian delegation indicated that Article 36 of the Colombian Constitution recognized the right to asylum under the terms provided by law. In addition, the Constitutional Court of Colombia had stated in its decisions that the right to asylum was a guarantee that every person had before the international legal system and represented a humanitarian expression. Asylum arose as a measure to remedy the defenselessness of a person against a system against which he or she dissented for reasons of political or religious opinion. In that sense, denying the right of asylum to a person was not only tantamount to leaving him or her in a state of serious and imminent defenselessness, but also entailed a denial of international solidarity. However, as the Court stated, it should be noted that that right did not apply in the case of common crimes. Asylum sought to avoid a state of individual defenselessness in the face of a state threat against the person, for political, philosophical, religious, or doctrinal reasons.

The Colombian delegation said indicated that its government had always practiced diplomatic asylum and had even defended its nature as a regional custom before the ICJ in the Haya de la Torre case in 1950, in which it argued the existence of a regional custom of diplomatic asylum based on several extradition treaties, the Montevideo Treaty on International Penal Law of 1889, the Bolivarian Agreement of 1911, the Havana Convention of 1928, and the Montevideo Conventions of 1933 and 1939. In its submissions, Colombia indicated that the institution of asylum in the Americas was born as a result of the coexistence of two phenomena derived 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.

The Colombian delegation recalled that in the inter-American system for protection of human rights, the right to asylum was codified in Article 22 (7) of the American Convention on Human Rights. Although the right of asylum had not been proposed in the initial draft of the treaty, it had been included at the request of Colombia and approved by the States of the region.

In the current context, it highlighted Advisory Opinion OC-25/18 of May 30, 2018, requested by the Republic of Ecuador, which constituted at the national level a relevant hermeneutic criterion to establish the scope of protection of fundamental rights, in application of the interpretative function of the constitutional corpus. Among the concepts expressed therein, the Court considered that, though, according to the interpretative guidelines considered by said court, it could not be established that diplomatic asylum was protected by the American Convention or the American Declaration, it did highlight the need to recognize

the different factors to be weighed in the comprehensive treatment of that issue, since the nature of the diplomatic functions and the fact that the legation was located in the territory of the receiving State introduced a significant difference with territorial asylum, since diplomatic asylum could not be regarded exclusively from its legal dimension since there was an interaction between the principle of State sovereignty, diplomatic and international relations, and protection of human rights.

7. Close of the meeting

The Chair of the CAJP took note of the presentations and, in the absence of additional requests to speak, adjourned the meeting.