

L'AFFAIRE JULIAN ASSANGE

Jayantha Dhanapala analyses a diplomatic imbroglio that has dominated the headlines

At the time of writing, a controversial 41-year-old Australian Julian Assange languishes in a windowless room of the Ecuadorean embassy in London, surrounded on the street outside by a British police posse poised to arrest and extradite him to Sweden as soon as he dares leave the premises. The background to this bizarre situation, an analysis of the issues involved, and the speculation over its likely outcome are both necessary as a case study of the complexity of international relations and a salutary reminder that international law is not yet a perfect Global Positioning System (or GPS) to distinguish between right and wrong.

Proponents of the right to information and free speech face-off against the defenders of state security and sanctity of official secrets. Some feminist groups confront others over the issue of sexual crimes allegedly committed by Assange against two women in Sweden. Supporters of the right to asylum and the Vienna Convention on Diplomatic Relations of 1961 clash with those who claim the supremacy of the laws of sovereign countries and bilateral extradition agreements.

The first antinomy arises from the dramatic unloading of a sheaf of secret official documents of the United States Government in the Wikileaks episode of 2010. Private Bradley Manning (a



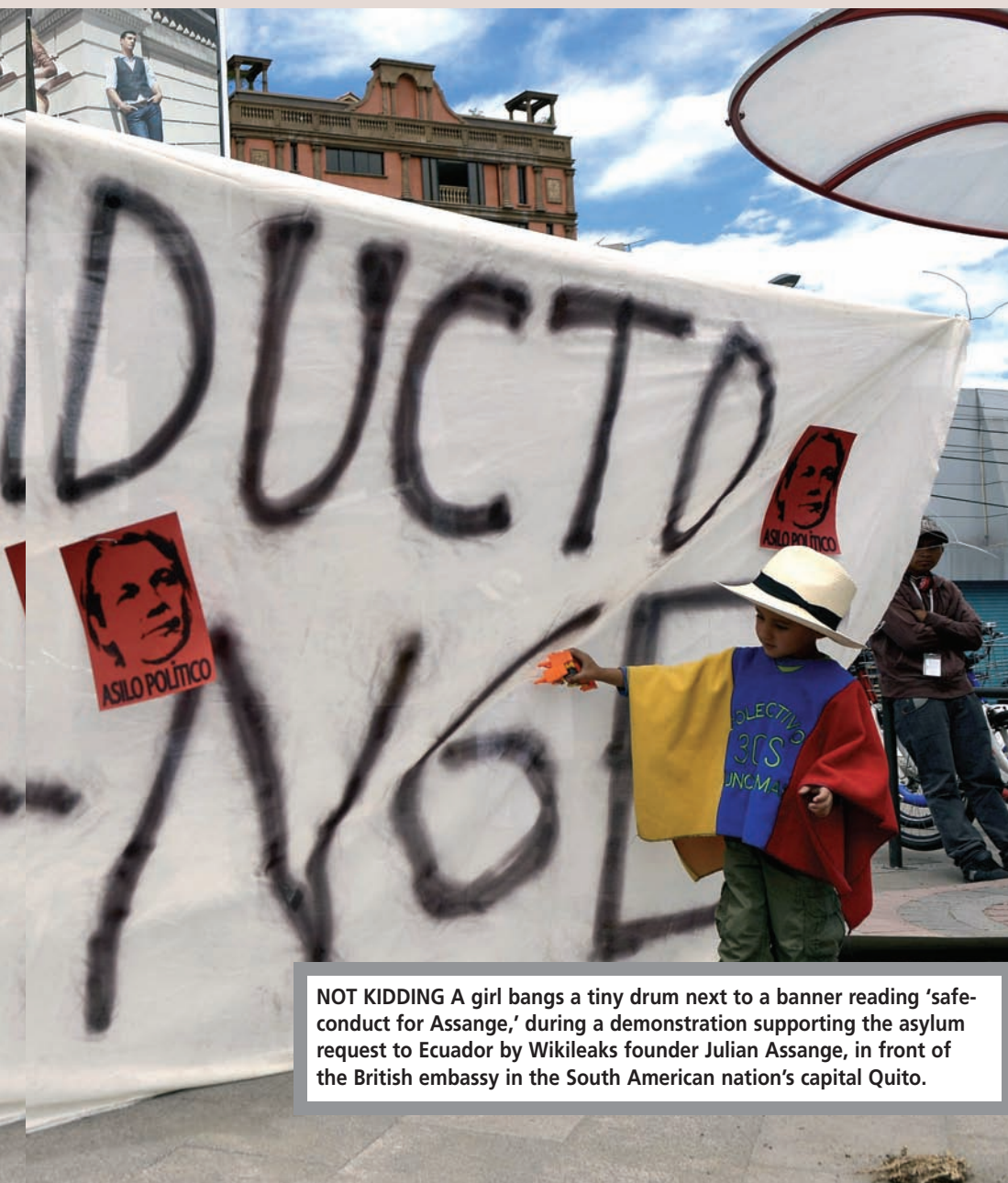
US army intelligence analyst, now facing serious charges in the US, amidst calls for his execution) allegedly passed on a cache of classified documents to Julian Assange as Editor-in-Chief of Wikileaks, who then retailed them to a select group of global newspa-

pers to publish at their discretion. Described by some as an act of conscience by a whistleblower – who in his own words regards the need for the material he leaked to be in the public domain as a ‘public good’ – Manning has been hailed by that most famous

whistleblower of Pentagon Papers fame Daniel Ellsberg, who leaked secrets of the unpopular Vietnam War to the New York Times in 1971 and survived legal challenges over it.

The bulk of the material leaked consists of ambassado-

The writer is a retired Sri Lankan Ambassador and a former UN Under-Secretary-General.



NOT KIDDING A girl bangs a tiny drum next to a banner reading 'safe-conduct for Assange,' during a demonstration supporting the asylum request to Ecuador by Wikileaks founder Julian Assange, in front of the British embassy in the South American nation's capital Quito.

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low-level analyst had such access is inexplicable. The balance in liberal democracies, especially those that preach such virtues as free speech and transparency to us in the Global South, between the right to information for the good governance of all its citizens and the right of governments to secrecy, is a matter for the courts to decide; and the outcome of the Manning case will no doubt be watched with great interest by the whole world.

However, the vindictive pursuit of the recipient of the documents – Wikileaks founder Assange – is another matter, both because he is not a US national and is also beyond the reach of US law, unless his own Government – which has so far not lifted a finger to help him – or some other government of a country where he is a temporary resident extradites him legally or engages in

rial reports from US diplomatic missions abroad, including Sri Lanka, of conversations on a host of bilateral and global issues. While undoubtedly embarrassing, it must be noted that a diplomat is not a spy and that conversations he or she has are part of the legiti-

mate political reporting an ambassador undertakes, based on discussions with a broad range of interlocutors filtered through the perspective of his or her government's policies.

It must also be clarified that the foreign-policy of governments are never solely based

on their ambassadors' reports, which are only a part – often a very small part – of the many factors that go into foreign-policy formulation. The case against Private Manning is that he contravened the oath of secrecy he was sworn to uphold, although why such a



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a surreptitious act of rendition. The latter possibility looms large since Sweden in December 2001, even under a left-leaning government, stands guilty of the rendition of two persons to the US where they were tortured.

On the issue of the sexual crimes Assange is accused of, there is a 'he said, she said' dispute between the two parties that only medical evidence and a judicial trial can settle. However, it is important to mention here that Assange has not been formally accused. The Swedish authorities claim they want to question him and have issued a European arrest warrant which the British courts have upheld. If so, the Ecuadorean Government argues, why does Sweden not send a team of investigators to Ecuador's embassy in London for the interrogation of Assange? Some feminist groups also argue that the zeal displayed by Sweden over the Assange case contrasts strangely with the statistics with regard to sexual offences against women in Sweden.

On the matter of international law, Article 22 of the Vienna Convention on Diplomatic Relations of 1961 is very clear on the inviolability and immunity extended to diplomatic premises, and the

UK must be rueing the day it threatened to invade the Ecuadorean embassy. That threat united the whole of Latin America against the UK, which already has problems with Argentina over the disputed Falkland (Malvinas) Islands and an Organization of American States (OAS) resolution is the result. The surfacing of a little-known piece of domestic legislation in the UK (the Diplomatic and Consular Premises Act 1987) ostensibly enacting the Vienna Convention into domestic law, but with a huge loophole to drive a horse and carriage through, has certainly queered the pitch not just of UK-Ecuador relations, but of international diplomatic practice. That loophole has a particular background arising from the use of the Libyan embassy premises to shoot and kill a policewoman in London in 1984, wounding several other demonstrators.

However, if every country had exceptions to diplomatic immunity, there would be chaos. Of course, provision exists for countries to revoke the immunity conferred on their diplomatic agents, and that has been done by a wide variety of states where crimes or serious traffic accidents have occurred. It did not happen when a Burmese

Ambassador (Boonwat) allegedly murdered his wife in his residence in Colombo. The Ambassador was recalled to Burma for trial. The revocation of immunity for diplomatic premises by the state owning it is only possible where there has been a mass defection of embassy staff or in a state of war, when in any case diplomatic representation would be withdrawn.

Diplomatic asylum is especially important in the Latin American context, where until the current wave of democracy swept aside all the military regimes and autocracies that existed, often mollycoddled by the US, the right to give freedom fighters and human-rights activists asylum to save them from certain execution in neighbouring nations was jealously safeguarded. The Inter-American Convention on Diplomatic Asylum of 1954 is followed by most Latin American countries, but not by the US. Extra-territorial asylum may be granted by a state on its notional territory such as its embassy. Lurking behind all this is the shadow of the US – the sole superpower, already isolated in the OAS meetings over its embargo on Cuba. Appeals by Ecuador to the UK and Sweden to convey assurances that Assange

would not be extradited to the US have met with a deafening silence.

Some diplomatic history is relevant at this stage. Possibly the longest case ever of a dissident taking sanctuary in an embassy was that of the Hungarian Catholic Cardinal József Mindszenty, who spent 15 years under the protection of the US embassy in Budapest, from 1956 to 1971. Moreover, the US embassy in Beijing granted Fang Lizhi asylum in 1989, releasing him a year later under a deal negotiated with the Chinese Government for him to leave for the US. This year in China, Chengdu Police Bureau Chief Wang Lijun was in the US consulate in Chengdu briefly, while the blind dissident Chen Guangcheng was in the US embassy in Beijing for a week and left voluntarily in a negotiated deal.

Clearly, the Assange standoff must be resolved through negotiations between Ecuador and the UK. No one, least of all Assange, would want a protracted siege of the Ecuadorean embassy in London. Orderly diplomatic relations among countries will benefit from a peaceful negotiated resolution of this international legal and diplomatic imbroglio.



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