The question:

The UN Working Group on Arbitrary Detention's opinion in the Assange case: flawed or flawless?

Introduced by Eirik Bjorge (Jesus College, University of Oxford)

The opinion by the UN Working Group on Arbitrary Detention finding that Julian Assange is arbitrarily detained was handed down on 5 February 2016, attracting unprecedented levels of attention. The initial reception was extremely critical. The British Foreign Secretary referred to the decision as 'ridiculous' and as having been handed down by 'lay people', and a former Director of Public Prosecutions called the opinion 'ludicrous'. Running the political gamut from the *Washington Post* to the *Guardian*, across the board, leader and Op-Ed writers in the anglosphere seemed to be singing from the same hymn sheet in expressing fierce criticisms of the judgment.

It is worth considering for a space one background against which this spectacle has been playing out, obvious to most but pointed out by few, in a case which has such a strong bearing on reason of state and on the purview of the security establishment. As one senior former judge, Sir Stephen Sedley, has observed recently with respect to the United Kingdom, the security services are now so powerful that in relation to the principle of the separation of powers they could be thought to constitute an autonomous limb of the State: 'their ability to procure legislation which prioritises their own interests over individual rights and even public welfare, to dictate executive decisions, to lock their antagonists out of judicial processes and to operate largely free of public scrutiny seems at least to make the proposition arguable.' (*Lions under the Throne* (CUP 2015) 190–1).

When, as in the Assange case, a decision is handed down, by a body created by the UN as one its human rights special procedures mandates, which goes so squarely against the interest of the security services of,

amongst others, the United Kingdom, most if not all the subterfuge aptly described above can be assumed to have been in full swing.

Perhaps that at least contributes to explain why the frisson with which the opinion was initially met was of quite such an astonishing and seemingly well-coordinated *froideur*.

Over time the reaction has been rather more nuanced, General Counsel to Human Rights Watch, Dinah PoKempner pointing out that the United Kingdom and Sweden 'have severely damaged their own reputation for being so ready to dismiss upholding inconvenient human rights obligations'; Kirsty Brimelow QC, Chairwoman of the Bar Human Rights Committee of England and Wales, calling for the UN opinion to be given the respect to which it is entitled and for egos to calm; Professor Liora Lazarus of Oxford University reminding us that unpopular individuals too have human rights; and Former Legal Counsel to the United Nations, Hans Corell, describing the opinion as well formulated and expressing incredulity, no doubt shared by many, as to why the Swedish prosecutor had not questioned Julian Assange during all the years he has been at the Ecuadorian Embassy.

Nuanced, too, are the two thoughtful pieces by Dr Valère Ndior and Johann Leiss which follow. Both authors are experts in the field and have, through the critical analysis to which they subject the Assange opinion and its reception, penned fine contributions which enhance our understanding of the case and its context by addressing the core legal issues at stake: Can one say that Assange's situation amounts to a deprivation of liberty and detention even if he voluntarily entered the Ecuadorian embassy? Did Sweden and the UK choose the least restrictive means for the realization of the criminal investigation, or should one instead regard the detention of Assange in the Embassy as amounting to a violation of the principle of proportionality?