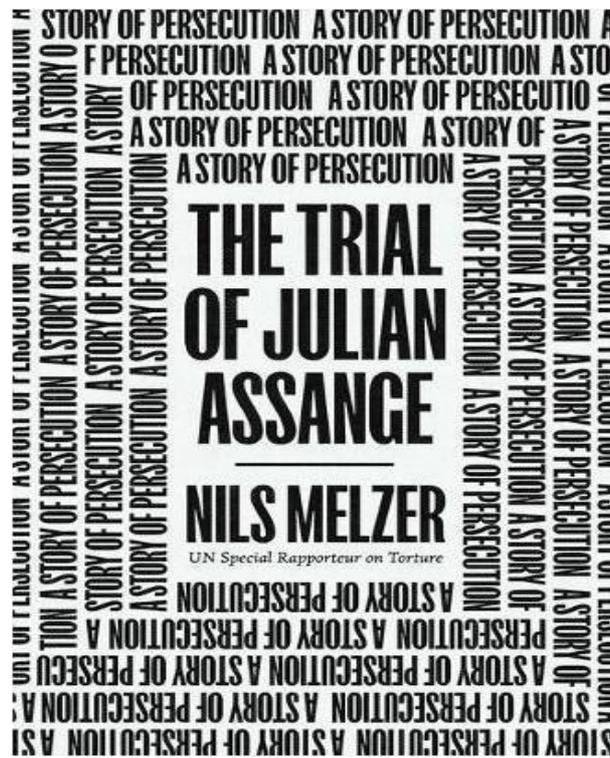


JULIAN ASSANGE: WHY WE SHOULD CARE¹

A SUMMARY OF ANSWERS FROM THE BOOK
“THE TRIAL OF JULIAN ASSANGE”

By NILS MELZER
UN SPECIAL RAPPORTEUR ON TORTURE



Julian Assange is an Australian citizen facing over 170 years in a US prison for revealing war crimes committed by the US in Iraq and Afghanistan. Nils Melzer, the former UN Special Rapporteur on Torture has written a powerful expose of the abuses of power and myths aimed at Mr Assange by the US in its bid to prosecute him. This document has been prepared by the Australian Assange campaign legal team. It summarises the key findings and points made by Professor Melzer.

¹ The information contained in this document is taken from the book “*The Trial of Julian Assange*” by Nils Melzer, UN Special Rapporteur on Torture.

Who is Nils Melzer and why did he write a book about Julian Assange?

Professor Nils Melzer (Switzerland) is a UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Human Rights Chair of the Geneva Academy of International Humanitarian Law and Human Rights and Professor of International Law at the University of Glasgow. (Google him).

Professor Melzer initially declined to respond to a request to investigate Mr Assange's treatment but later read a report by the UN Working Group on Arbitrary Detention that confirmed Mr Assange's stay in the Ecuadorian Embassy was a reasonable response to his real fear of extradition to the United States of America and the risk of political persecution and inhumane conditions in detention.² The UN Working Party confirmed that the confinement in the Embassy did amount to arbitrary detention.³ Professor Melzer's further investigation revealed that the Swedish charges against Mr Assange were without foundation, and he became concerned about the persistent and personal attacks on Mr Assange. He realised that the prosecution of Mr Assange was not just about a crime, but a case of "enormous political dimensions" that required his further investigation.⁴

As he investigated the matter, he became concerned about the lack of engagement by the countries involved, the United States of America, the United Kingdom and Sweden. He was also concerned that Australia had abandoned its obligations to protect its own citizen⁵ concluding "*Australia is a glaring absence in this case*".⁶ His examination of Mr Assange's extradition hearings in the United Kingdom gave him real concern that it had more in common with "*show trials*", than actual justice.⁷

The "*screaming silence*"⁸ of the mainstream media and their complicity with the persecution of Mr Assange made him realise the "*danger posed by the trial of Julian Assange to press freedom, due process, democracy and the rule of law*".⁹

² Page 34

³ <https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/A.HRC.WGAD.2015.docx>

⁴ Page 37

⁵ Page 181

⁶ Page 243

⁷ Page 289

⁸ Page 309

⁹ Page 310

Professor Melzer was also extremely concerned about the “*acute danger*”¹⁰ to Mr Assange’s health and mental well being. He was aware of the damage that the incarceration and propaganda was doing to Mr Assange’s mental health from the reports prepared by independent doctors he arranged to examine Mr Assange.¹¹

Finally, as his appeals to the UK, Swedish and United States governments to respect the rights of Mr Assange were being ignored,¹² he felt that someone had to stand up, to speak out and expose this travesty of justice.

The Trail of Julian Assange is Professor Melzer's attempt to “*change the world through courageous action*”¹³ and allow the candle that Julian Assange has lit, to “*expose crimes, abuse and corruption*”.¹⁴

1. Why should we care about Julian Assange?

As Professor Nils Melzer says:

*the persecution of Assange establishes a precedent that will not only allow the powerful to keep their crimes secret but will even make the revelation of such claims punishable by law. Let us not fool ourselves: once telling the truth has become a crime we will all be living in a tyranny.*¹⁵

Professor Melzer concluded,

*Assange is not prosecuted for his own crimes, but for the crimes of the powerful. Their impunity is what the trial of Assange is really about. It is the powerful – whether governments, corporations, or organisation – who undermine our democratic institutions and the rule of law: who refuse to prosecute torture, war crimes and corruption, who betray our legal systems and shared values for self-serving purposes.*¹⁶

A failure to care about Julian Assange, is a failure to care about the rule of law and the right to a “fair go” for a brave Australian.

¹⁰ Page 285

¹¹ Page 63

¹² Page 312

¹³ Page 333

¹⁴ Page 333

¹⁵ Page 330

¹⁶ Page 330

2. Didn't the publication of confidential United States documents by WikiLeaks and New York Times, The Guardian, Der Spiegel and other put people's lives at risk?

No: At the trial of Chelsea Manning in 2013, the US State Department explicitly acknowledged, in court under oath, that the department had "*no concrete examples of any individual having suffered harm or being exposed to serious threat as a consequence of the publications.*"¹⁷

The 'Cable Gate' documents (mainly cables from US embassies) were released by the German magazine *Der Freitag* and *Cryptome.org* enabled by two *Guardian* newspaper journalists' betrayal of trust by publishing, the secret pass phrase to the Cable Gate cache.¹⁸

Prior to the release, Mr Assange had urgently contacted the US State Department and informed them that there had been a security leak, urging they undertake any measures considered necessary.¹⁹ In the "*Afghan War Diary*" document release, (which detailed previously unreported civilian deaths on a major scale and other illegal acts), Wikileaks withheld 15,000 documents giving the US International Security Assistance Force time to identify sensitive data.

Mr Assange did release a video entitled "*Collateral Murder*", showing two war crimes, (the murder of civilians picking up the bodies of wounded civilians and eleven other people including two Reuters journalists, all killed by shooting from a US helicopter), for which no one was ever prosecuted²⁰. (Please view)

The documents released through WikiLeaks caused considerable embarrassment to the US government; in the exposure of actual war crimes and diplomatically, including evidence that the US was tapping the phones of political leaders such as then Chancellor of Germany, Angela Merkel.²¹

The allegation Mr Assange put people's lives at risk is just another tool to demonise Mr Assange.

¹⁷ Page 308

¹⁸ Page 24

¹⁹ Page 308

²⁰ <https://www.youtube.com/watch?v=HfvFpT-iyw>

²¹ Page 308

3. Mr Assange was never charged with any offense in Sweden

Mr Assange was never charged with any offence in Sweden. He was most certainly never charged with rape and the allegations against him were without foundation. The preliminary investigation against him was initiated by two women who visited the Swedish police to “seek advise on how to obtain a HIV test from Assange”.²² Eleven minutes after the women entered the police station, the Swedish police entered a criminal report of rape into their system without formally interviewing the two women. The Swedish police then leaked the claim of rape to the Swedish newspaper Expressen, which hours later ran a story headline “Wikileaks Julian Assange Hounded on Suspicion of Rape in Sweden”.²³ This false allegation has been used to label Mr Assange as a rapist ever since.

Within 24 hours the Chief Prosecutor for Stockholm, Eva Finne reviewed the case, cancelled the arrest warrant and issued a press statement in relation to Mr Assange stating “*I don’t believe there is any reason to suspect him of rape*”.²⁴ The investigation was subsequently reopened twice and later abandoned without any charges being laid.

Incidentally, in 2012, at a time when Swedish authorities were looking at dropping the case against Mr Assange, the British Crown Prosecution Service sent an email to their Swedish colleagues “*to order, ‘Don’t you dare get cold feet*”.²⁵

4. Mr Assange was interviewed by Swedish police on August 30th, 2010, answering all questions.

Unfortunately, three days later the police, in breach of their obligations of confidentiality, released the full interview to *Expressen*, who published it. As mentioned above, Stockholm Chief Prosecutor Eva Finne had closed the case.

When the case was reopened Mr Assange agreed to an interview with the Swedish police.²⁶

He also remained in Sweden for a month after the initial report to the police and after obtaining permission to leave Sweden from Swedish Prosecutor Nye, left Sweden.

²² Page 117

²³ Page 128

²⁴ Page 133

²⁵ Page 186

²⁶ Page 150

5. When the Swedish case was opened for the third time why didn't Mr Assange to back to Sweden to answer the charge?

Mr Assange offered to be interviewed in England or in Sweden if the Swedish government would give an undertaking that they would not deport him to the United States of America. He had good reason to be concerned about the Swedish handing him over to the Americans without due process because the Swedish Secret Police, the SÄPO, had previously removed two Egyptians²⁷ who had sought asylum from Egypt in Sweden to a CIA aircraft which took them to Egypt where both were extensively abused and tortured. The Swedish government later compensated the Egyptians for the breach of their rights under Swedish law and breach of their human rights.

Mr Assange understood this may happen to him and if he was imprisoned in the US for 175 years, a compensation claim in Sweden would be of little value.

6. Why doesn't Mr Assange just go to the United States and face the charges? He will get a fair trial there.

No, he will not get a fair trial.

In December 2010 the then Vice President Biden described Mr Assange as a "*high tech terrorist*".²⁸ He is likely to be tried in the US Espionage Court of Alexandria in the eastern district of Virginia near Washington. A jury trial consultant on another espionage case said of that court, "*your jury is going to be made up of people with friends, relatives at the CIA, the Pentagon, National Security intelligence contractors. You don't stand a chance, just take a deal.*" In that case, former CIA Agent John Kiriakou took a deal.²⁹

Professor Melzer agrees that Mr Assange will not get a fair trial saying, "*even the boldest idealist would probably rule out the possibility of Assange being found innocent in the US Espionage Court.*"³⁰

Mr Assange has reasonable concerns that he will be incarcerated in a supermax prison and subjected to "*special administrative measures*" (SAM). Such SAM includes solitary confinement 24 hours a day; no communication with other inmates or staff; recreation limited to 1 hour daily in a small indoor cage; no newspaper; no radio; no television; two short phone calls per month; and limited family visits with no physical contact allowed whilst shackled behind thick glass barriers.³¹ In the last extradition appeal, the US government

²⁷ Page 160

²⁸ Page 328

²⁹ Page 221

³⁰ Page 219

³¹ Page 228

acknowledged that this was a possibility but undertook not to imprison him in the ADX Supermax facility in Colorado, “*unless he did something subsequent.... to justify such measures.*”³²

7. What about the charges he is facing, aren't they serious?

Yes, they are serious. The outcome could see Mr Assange jailed for up to 175 years. The 18 charges³³ allege that Mr Assange either aided and abetted or conspired with Chelsea Manning to obtain documents or had unauthorised access to documents that Manning had delivered to him. During the extradition hearing before Judge Baraitser, evidence was given by many witnesses, including Daniel Ellsberg, (who was charged with espionage over the Pentagon Papers), that it was part of a journalist's job to solicit sources for information, even if it is classified.³⁴ If Mr Assange is guilty of possessing classified information, then so is the New York Times and other newspapers.

Professor Melzer is of the opinion that Mr Assange's action are protected under the US First Amendment of the Constitution but “*If Assange were to be prosecuted nonetheless, it would set a terrible precedent for investigative journalism. It would mean that, from then on, any publication based on leaked material would become a crime. The resulting danger for press freedom could not be overstated.*”³⁵

8. Why did he not leave the Ecuadorian Embassy?

Mr Assange's confinement in the embassy was considered in detail in a report by the UN Working Group on Arbitrary Detention (**WGAD**)³⁶. In its conclusion the WGAD report stated:

The current detention of Mr. Assange staying within the confines of the Embassy of the Republic of Ecuador in London, United Kingdom, has become a state of arbitrary deprivation of liberty.

This conclusion was based on many grounds, including the ongoing procrastination of the Swedish prosecution authorities; the fact that Mr Assange had been denied access to exculpatory evidence; the fact that he could not contest the allegations against him; the absence of an effective form of review of his situation; and the fact that both the United

³² Page 324

³³ <https://www.justice.gov/opa/press-release/file/1289641/download>

³⁴ Page 306

³⁵ Page 36

³⁶ <https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/A.HRC.WGAD.2015.docx>

Kingdom and Sweden had not recognised his asylum. Further, after Mr Assange's UK High Court challenge to the Swedish arrest warrant exposed an abuse of process, the United Kingdom had changed the law to correct the defect but refused to apply the new law to Mr Assange.

The WGAD report confirmed that

*Assange's embassy asylum was his only option to avoid extradition to the United States and the relate risk of political persecution and inhumane conditions of detention. Like any other human being, Assange could not reasonably be expected to give up his safety and expose himself to the risk of serious human rights violations.*³⁷

This was also the conclusion of Professor Melzer. Clearly Mr Assange's seeking of asylum was justified, and the fear of politically motivated prosecution because he was a whistleblower has come to pass with the evidence of the US pressure to cause his expulsion from the Embassy.³⁸

9. Didn't he smear shit all over the walls in the Ecuadorian Embassy and try to hack their computers, and treat the staff badly?

No, he did not. These are unsubstantiated and false allegations made by the Ecuadorian Embassy. He had close and friendly relations with Ecuadorians in the Embassy until there was a change of government in Ecuador. Following pressure from the United States, Ecuador under a new government, agreed to expel him.³⁹ Despite continuous and extensive secret surveillance of Mr Assange whilst in the Ecuadorian Embassy, all of which is in the hands of the United States, no video has ever revealed he smeared any excrement on the walls.⁴⁰ Further, his dishevelled look when he was removed from the Embassy was as a direct result of them removing his razor blades three months prior to his removal.

The allegation that he hacked into the Ecuadorian Embassy computers is simply another false accusation,⁴¹ as was the claim that he constituted a terrorist threat.⁴²

³⁷ Page 34

³⁸ Page 212

³⁹ Page 212

⁴⁰ Pages 58 and 208

⁴¹ Page 209

⁴² Page 210

10. What can we do?

1. Just like Professor Melzer, we should recognise that we have all been misled by the very deliberate personal attacks on Mr Assange's character. They do not stand up to independent investigation.
2. We need to recognise that the attack on Mr Assange is not just about him, but an attempt by governments to divert public attention from their war crimes, abuse, and corruption⁴³ as Professor Melzer warns, and Mr Assange's persecution is intended to deter any other whistle-blower from exposing the crimes of governments.
3. We need to encourage the Australian government to work with the Biden Administration to withdraw the charges against Mr Assange, and to discontinue the extradition proceedings in the United Kingdom.

For further information or comment on these matters, please contact:

John Shipton 0452 662 222

Greg Barns SC 0419 691 846

Stephen Kenny 0419 689 266

⁴³ Page 332



Professor Nils Melzer – UN Special Rapporteur on Torture



Prof. Nils Melzer (Switzerland) is the Human Rights Chair of the Geneva Academy of International Humanitarian Law and Human Rights. He is also Professor of International Law at the University of Glasgow. On 1 November 2016, he took up the function of UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Prof. Melzer has served for 12 years with the International Committee of the Red Cross as a Legal Adviser, Delegate and Deputy Head of Delegation in various zones of conflict and violence. After leaving the ICRC in 2011, he held academic positions as Research Director of the Swiss Competence Centre on Human Rights (University of Zürich), as Swiss Chair for International Humanitarian Law (Geneva Academy) and as Senior Fellow for Emerging Security Challenges (Geneva Centre for Security Policy), and has represented civil society in the Steering Committee of the International Code of Conduct for Private Security Service Providers.

In the course of his career, Prof. Melzer has also served as Senior Security Policy Adviser to the Swiss Federal Department of Foreign Affairs, has carried out advisory mandates for

influential institutions such as the United Nations, the European Union, the International Committee of the Red Cross and the Swiss Federal Department of Defence, and has regularly been invited to provide expert testimonies, including to the UN First Committee, the UN CCW, the UNSG Advisory Board on Disarmament Matters, and various Parliamentary Commissions of the European Union, Germany and Switzerland.

Prof. Melzer has authored award-winning and widely translated books, including: "Targeted Killing in International Law" (Oxford, 2008, Guggenheim Prize 2009), the ICRC's "Interpretive Guidance on the Notion of Direct Participation in Hostilities" (2009) and the ICRC's official handbook "International Humanitarian Law - a Comprehensive Introduction" (2016), as well as numerous other publications in the field of international law. In view of his expertise in new technologies, Prof. Melzer has been mandated by the EU Parliament to author a legal and policy study on "Human Rights Implications of the Usage of Drones and Robots in Warfare" (2013) and has also co-authored the NATO CCDCOE "Tallinn Manual on the International Law applicable to Cyber Warfare" (Cambridge, 2013), and the NATO MCDC "Policy Guidance Autonomy in Defence Systems", (NATO ACT, 2014).

Throughout his career, Prof. Melzer has fought to preserve human dignity and the rule of law through the relentless promotion, reaffirmation and clarification of international legal standards offering protection to those exposed to armed conflicts and other situations of violence.

<https://www.ohchr.org/en/special-procedures/sr-torture/nils-melzer>