

Julian Assange, the UN and the Meaning of “Arbitrary Detention”

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Region: [Europe](#)

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“Should the UN announce tomorrow that I have lost my case against the United Kingdom and Sweden I shall exist the embassy at noon on Friday to accept arrest by British police as there is no meaningful prospect of further appeal.”- Julian Assange, Twitter, Feb 4, 2016.

The UN is a funny old thing. It has provided, historically, the strangest collective of bedfellows, fed on a good staple diet of hypocrisy and political jousting. It has more panels than Italian pasta varieties, more working committees than French cheese. At times, its workings reek of private school understandings and diplomatic niceties. That said, the body has provided a host of relevant decisions on the subject of human rights that are hard to dismiss. Out of understandings come that most curious of beasts known as international law.

The UN Working Group on Arbitrary Detention found for Assange on Friday, citing “different forms of deprivation of liberty: initial detention in Wandsworth prison which was followed by house arrest and his confinement at the Ecuadorean embassy.” Such detention, initially commenced to answer allegations of sexual abuse in Sweden, was arbitrary as he was held in isolation during the first stage, and also “because of the lack of diligence by the Swedish Prosecutor in its investigations, which resulted in the lengthy detention of Mr. Assange.”

The Working Group has argued that Assange’s “safety and physical integrity” be assured, that “his right to freedom of movement” be respected, and that he enjoy the full gamut of “rights guaranteed by the international norms on detention.” Compensation has also been suggested.

The press conference, in which panel member Christophe Peschoux fielded a range of often baffling, even hostile questions, suggested vast confusions about the nature of detention and the status of the panel. One French journalist insisted that all Assange needed to do was step outside the Ecuadorean embassy to “answer a few questions” about alleged sexual naughties. Others suggested that the findings would open the floodgates to “criminals” claiming to be arbitrarily detained. Such belittling naïveté was only matched by the colossal ignorance of those present about the “arbitrary” nature of the detention.

No where in the question session for Peschoux in Geneva was there the contextual background, the fact that this individual is wanted by a score of states keen on nabbing the spiller of state secrets. Law by itself is a sterile and dead thing. It needs background animation to give it purpose, nefarious or otherwise.

Instead, editorials and some legal authorities have decided on a micro-perspective jaunt, insisting that the UN panel had erred. *The Guardian* editorial felt that the entire view was

wrong. “He is not being detained arbitrarily.” The defying Australian had simply wanted to avoid extradition to Sweden “to face allegations of sex offences.” Showing how tense its relationship with Assange has been over the years, the paper decided that he was only interested in a “publicity stunt”.[1]

Other lawyers also took to the barricades of the status quo, failing to find arbitrary detention anywhere. International law authority Philippe Sands considered the report “poorly reasoned and unpersuasive”.[2] *The Daily Mash* also wished to have its satirical poke at Assange, chuckling that, “A Man who has been waiting for his Argos purchase for more than 15 minutes is being detained in violation of his human rights, the UN has ruled.”

Both the UK and Sweden have combined, through a spurious case against Assange, to use the pretext of his refusal to accept a “benign” questioning session – to be held outside the safety of the embassy – as a point of condemnation. Never mind that the Swedish preliminary case has now lasted for over five years without charges; or that two of the three initial points of query on molestation have been dropped, leaving the rape allegation standing.

A hunt for the legal status of the Working Group’s finding has also done the rounds, again suggesting a fundamental legal illiteracy running the media cohorts. “We, the Working Group,” according to Peschoux, “conclude that in case X or Y, this person is deprived because his internationally recognised rights have been violated, then the decision is indirectly, but still legally binding on the relevant authorities.”

The reality is that this decision is not a ruling but a finding. It is on that basis, saddled to international law, that its legitimacy lies. Arbitrary detention, compensation for a loss of liberty, are all recognised in international law. The mechanism for enforcement, however, requires will. Moral, normative force, is hard to ignore.

As with everything that seems to touch Assange, disagreement was bound to happen even within the body assessing his claims. The panel, consisting of five independent members, fell one short because of perceived conflict of interest from an Australian member. This left four to hand down findings, of which one was in disagreement. Usually, such panels operate on consensus. The Ukrainian member though otherwise, leaving three to agree with Assange’s arguments.

The response from a Downing Street spokesman has been dismissive. Such UN determinations have no truck in England’s green land. “We have been consistently clear that Mr Assange has never been arbitrarily detained by the UK but is, in fact, voluntarily avoiding lawful arrest by choosing to remain in the Ecuadorean embassy.”[3] Foreign Secretary Philip Hammond was more direct, calling the findings “ridiculous”.

Swedish prosecutors were already making their view clear in advance – the UN panel’s decision would have “no formal impact” on its investigation, if it even warrants that designation. Having already dropped two sexual assault claims, the only, and very serious one of rape, remains in the prosecution armoury.

Assange, as he has done for years, continues to intrigue. Some of this is play, a courtship with publicity exacerbated by circumstances. Some of it is the tease of desperation, the impulse to be heard. There is little doubt that he is suffering under the strain of acute physical isolation, something that is only alleviated in minor doses by visits, and moments

like the UN panel finding.

Connected as he is to the virtual globe, accessible as he is to hundreds of news studios and forums, tapped into the latest movements and theories about information, his body remains confined. Bound in, or more accurately to, the earthly Ecuadorean temple in London, he is still contending with the idea of being a king of infinite digital space.

Such is the nature of modern confinement for the technological dissident, a form of de facto incarceration that relies on innuendo and threat, rather than concrete charges and suggestions. To be confined on the basis of rumour and innuendo rather than formal charge is a rather dire state of affairs. That, however, is simply one technique adopted by authorities. It has seen a range of whistleblowers and digital activists confined, convicted or exiled.

WikiLeaks remains an organisation that is rhetorically condemned as criminal but remains entirely functional and legitimate as a publisher. Its continued relevance is defined by the sheer trauma caused to traditional organisations that have lost sight of what confidentially actually means. This has been the nature of the Assange information war with his detractors from the start: how such material is controlled, released and used. It has extended from the tissue of his every existence, to the functioning of the US State Department.

Sex, illegal or otherwise, is politics; as are allegations, questionable or otherwise. When these are bound up in some of the most controversial disclosures of classified data in history, Assange has shown how such distinctions become meaningless. If they want to get you, they will.

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Notes:

[1]

<http://www.theguardian.com/commentisfree/2016/feb/04/the-guardian-view-on-julian-assange-no-victim-of-arbitrary-detention>

[2] <https://twitter.com/philippesands/status/695576583818633216>

[3] <http://www.bbc.co.uk/news/uk-35490910>

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