

Washington's Dirty Tricks: Bugging The United Nations. Breach of UN Treaty Obligations by US

By [Global Research](#)

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The UN has asserted that bugging the secretary general is illegal, citing the 1946 [Convention on Privileges and Immunities of the United Nations](#) which states: "The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action".

The 1961 [Vienna Convention on Diplomatic Relations](#), which covers the UN, also states that "the official correspondence of the mission shall be inviolable".

Introduction

Overview

- Wikipedia. [Spying on United Nations leaders by United States diplomats](#)
- Ben Saul. [Don't Cry over WikiLeaks](#). *The Age*, 2 December 2010

The US embassy cables indicated that Hillary Clinton as US Secretary of State, personally authorised a request to US diplomats, on behalf of the CIA, to steal personal human material and information from UN officials and human rights groups, including DNA, fingerprints, iris scans, credit card numbers, internet passwords and ID photos, in violation of international treaties. The revelations have prompted questions about whether such activity was legal, considering conventions that stipulate the UN's premises and correspondence "shall be inviolable". The relevant clause of the 1946 convention reads, as pointed out by a spokesman for the U.N, Farhan Haq:

The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial, or legislative action.

Applicable treaties: More generally, the treaties governing the UN and its staff at the UN HQ in New York, are detailed by the [U.S. Mission to the United Nations](#):

- [International Organizations Immunities Act: PL 79-291](#)

- [Convention on the Privileges and Immunities of the UN 21 UST 1418](#)
- [Vienna Convention on Diplomatic Relations 23 UST 3227, PL 95-393](#)
- [Headquarters Agreement: PL 80-357](#)
- [Foreign Sovereign Immunities Act: PL 94-538](#)

With respect to any infringement of human rights of individuals from whom information is sought in response to intelligence requests, of further relevance is the Presidential Executive Order 13107 [Implementation of Human Rights Treaties](#) (10 December 1998), signed by William Clinton. Of more general relevance are:

- Detlev F. Vagts. [The United States and Its Treaties: observance and breach](#), *The American Journal of International Law*, 95, 2, 2001, pp. 313-334
- Rita Y. B. Carlson. [What if the United Nations Sued the United States: a hypothetical case analyzing the UN Charter as a Government Contract](#), *Public Contract Law Journal*, 30, 525, 2000-2001
- John Kish and David Turns. *International Law and Espionage*. Martinus Nijhoff, 1995
- Christopher D. Baker. [Tolerance of International Espionage: a functional approach](#). *American University International Law Review*, 19, 2004, pp. 1091-1113
- Hedieh Nasheri. *Economic Espionage and Industrial Spying*. Cambridge University Press, 2005
- R. C. S. Trahair. *Encyclopedia of Cold War espionage, spies, and secret operations*. Greenwood Publishing, 2004

Questions are being raised by former UN staff, such as [Stephen Schlesinger](#), author of a book about the organization (*Act of Creation: the founding of The United Nations*, 2003), who said today that the spying was not a surprise — but what was, is the Obama administration's continuation of a policy begun by the Bush administration.

The fact that Hillary Clinton also signed off on these instructions, without modifying them, is startling to me. I would have thought a civil libertarian and liberal Democrat like Clinton (and Obama, too) would have stepped back after seeing these Bush rules and dropped them.

Official silence: Whilst there has been extensive media coverage of the alleged espionage by Julian Assange, very little has been heard of the case of espionage by the US at the UN in violation of its treaty obligations.

In a widely-circulated [letter](#) (4 December 2010) to Australian Prime Minister Julia Gillard,

Peter Kemp, Solicitor of the Supreme Court of New South Wales (Australia), asks:

I join with Professor Saul [[Don't cry over WikiLeaks](#), The Age, 2 December 2010] also in asking you Prime Minister why has there been no public complaint to the US about both Secretaries of State Condoleezza Rice and Hillary Clinton being in major breach of International law ie UN Covenants, by making orders to spy on UN personnel, including the Secretary General, to include theft of their credit card details and communication passwords. Perhaps the Attorney General should investigate this clear prima facie evidence of crime (likely against Australian diplomats as well), rather than he attempts to prosecute the messenger of those crimes.

There have been few other communications of this nature, most notably from any Member States of the United Nations according to any formal procedure as might otherwise have been expected. Consideration can also be given to the comments elicited from readers of many of the sources quoted below.

Press coverage

Immediate response to dissemination of the relevant cable

- [US embassy cables: Washington calls for intelligence on top UN officials](#). *The Guardian*, 28 November 2010
- Michael K. Busch. [Wikileaks: The United Nations](#). 28 November 2010
- Mark Mazzetti. [U.S. Expands Role of Diplomats in Spying](#). *The New York Times*, 28 November 2010
- Robert Booth and Julian Borger. [US diplomats spied on UN leadership](#). *The Guardian*, 28 November 2010
 - Diplomats ordered to gather intelligence on Ban Ki-moon
 - Secret directives sent to more than 30 US embassies
 - Call for DNA data, computer passwords and terrorist links
- Marcel Rosenbach and Holger Stark. [Diplomats or Spooks? How US Diplomats Were Told to Spy on UN and Ban Ki-Moon](#). *Spiegel Online*, 29 November 2010
- Julian Borger, [Embassy cables: Where does diplomacy end and spying begin?](#) *The Guardian*, 28 November 2010
- [US diplomats 'asked to spy on foreign dignitaries'](#). *ABC News*, 29 November 2010
- Mark Seddon. [Wikileaks - And the Bugging of Ban](#). *Big Think*, 29 November 2010
- [Cables show US sought personal info of foreign diplomats at UN](#). *The Times of India*, 29 November 2010
- [WikiLeaks Founder Calls for Hillary Clinton to Resign](#). *From the Left*, 30

November 2010

- Howard Chua-Eoan, [WikiLeaks Founder Julian Assange Tells TIME: Hillary Clinton 'Should Resign'](#), *Time Magazine*, 30 November 2010
- Zahir Shamsery. [Why WikiLeaks fall under outrage?: Clinton orders US Diplomats to Spy on Other Countries at United Nations](#). *Ecademy*, 14 December 2010

Reaction of UN

- [UN refuses to comment on Wikileaks documents](#). United Nations Radio, 29 November 2010
- Michael McGuire. [WikiLeaks: 'No comment' from UN](#). *Examiner.com*, 30 November 2010

Recognition of UN as a focus of espionage

- [WikiLeaks Scandal: is the United Nations a den of spies?](#) *Global News Journal Blog*, 29 November 2010
- Thalif Deen. [U.N.: a playground for spies of all political stripes](#). *Inter Press Service*, 30 November 2010

Role of CIA

- Ewen MacAskill and Robert Booth. [WikiLeaks cables: CIA drew up UN spying wishlist for diplomats](#). *The Guardian*, 2 December 2010
- [CIA behind U.S. envoys' espionage wishlist: report](#). *Reuters*, 2 December 2010
- Kevin Gosztola. [Wikileaks Cables: CIA Ordered US Diplomats to Spy](#) *OpEdNews.com*, 2 December 2010

As noted by Robert Booth and Julian Borger ([US diplomats spied on UN leadership](#). *The Guardian*, 28 November 2010):

The operation targeted at the UN appears to have involved all of Washington's main intelligence agencies. The CIA's clandestine service, the US Secret Service and the FBI were included in the "reporting and collection needs" cable alongside the state department under the heading "collection requirements and tasking".

Subsequent interaction between US and UN

- Robert Booth and Ewen MacAskill. [US embassy cables: UN seeks answers from Washington](#). *The Guardian*, 29 November 2010
 - United Nations official says US order to diplomats to glean

intelligence on UN leadership may breach international law.

- Brad Norington. [Hillary Clinton 'regrets' spying on Ban Ki-moon](#). *The Australian*, 4 December 2010
- Ewen MacAskill, Robert Booth and Julian Borger. [WikiLeaks Cables: Hillary Clinton Meets Ban Ki-Moon after Spying Revelations](#). *The Guardian*, 2 December 2010
- the US has ensured the collaboration of the UN, through UNESCO (as announced on 7 December 2010) to host the [World Press Freedom Day](#) (Washington, DC, May 2011):

The theme for next year's commemoration will be 21st Century Media: New Frontiers, New Barriers. The United States places technology and innovation at the forefront of its diplomatic and development efforts. New media has empowered citizens around the world to report on their circumstances, express opinions on world events, and exchange information in environments sometimes hostile to such exercises of individuals' right to freedom of expression. At the same time, we are concerned about the determination of some governments to censor and silence individuals, and to restrict the free flow of information. We mark events such as World Press Freedom Day in the context of our enduring commitment to support and expand press freedom and the free flow of information in this digital age.

Having authorised the acquisition of such information, the US Secretary of State personally expressed regret to the UN Secretary-General about its embarrassing disclosure by WikiLeaks. However it has been noted that the "regret" expressed by Hillary Clinton did not in fact take the form of an apology ([Hillary Clinton 'regrets' spying on Ban Ki-moon](#), *The Australian*, 4 December 2010). Her "regret" may well have focused on the revelation rather than on her action — as would seem to have been the case with regard to her predecessor, [Madeleine Albright](#), in commenting on the death of 500,00 children in Iraq as a result of sanctions: "[we think the price is worth it](#)".

It has however been recognized that it is difficult to bring US and its agents to court on any issue — from which they typically escape trial, conviction and punishment — however horrendous and irrespective of the number of lives lost. The US is not a signatory/participant of the International Criminal Court for that reason — as a means of evading the law and cases brought by other countries.

Denial by US of espionage at UN

- Louis Charbonneau. [Rice on WikiLeaks spy charges: We're just diplomats](#). *Reuters*, 29 November 2010
 - *Let me be very clear: our diplomats are just that... They are diplomats. That is what they do every day.*
- Associated Press:

- [Top US official in Geneva rejects spying claim](#). *The Seattle Times*/, 16 December 2010
- [Top US official in Geneva rejects spying claim](#). *The Washington Post/Associated Press*, 16 December 2010
 - U.S. Ambassador Betty E. King told reporters Thursday that “I just want to assure everybody we’re not collecting data on U.N. officials.”
 - King declined to discuss the accuracy and provenance of the memo.

As noted by Robert Booth and Ewen MacAskill ([US embassy cables: UN seeks answers from Washington](#). *The Guardian*, 29 November 2010):

The senior American diplomat at the UN tonight defended her team after WikiLeaks disclosed a US spying operation targeting the UN’s secretary-general, Ban Ki-moon, and members of the security council. Susan Rice, the US ambassador appointed to the UN by Barack Obama last year, appeared uncomfortable and, at times, exasperated as she took questions from the media at the UN today. She denied US diplomats were engaged in spying. “Let me be very clear: our diplomats are just that,” she said. “They are diplomats. That is what they do every day. They get out and work with partners here at the UN and around the world.” Rice was questioned about a leaked US cable showing diplomats were asked to find personal financial details about the UN leadership, including credit card information, passwords for their communications systems and frequent-flier membership. Ban’s office hit back at the US with a warning that any violation of UN “immunity” may breach international law. Rice, speaking after a meeting of the security council today, three times declined to deal directly with questions about the spying.

UN reaction to censorship of WikiLeaks

- [WikiLeaks case: United Nations is concerned by the American censorship](#). *Ecommerce Journal*, 10 December 2010
- Martyn Williams. [United Nations commissioner concerned over government interference with Wikileaks](#). *TechWorld*, 10 December 2010
 - High Commissioner for Human Rights worried by government pressure

US strategy in relation to UN

- W.E.B. Du Bois. [Has Wikileaks made Hillary unable to do her job?](#) *PoliticalForum.net*, 1 December 2010
- Colum Lynch. [WikiLeaks exposes U.S. strategy at the United Nations](#). *Foreign Policy*, 13 December 2010

Commentary

As noted above, the official position of the US, with respect to the instructions authorised by Hillary Clinton regarding acquisition of personal information on behalf of US intelligence agencies, appears to be:

- ignore any question of alleged infringement by the US of UN treaty obligations
- refusal to discuss the memo itself, since it is considered to be classified
 - hence it does not “exist” with respect to some legal processes and therefore cannot be submitted in evidence
 - hence the need to focus on the acquisition and dissemination of the memo (even though it does not exist)
- insistence that US diplomats are not engaged in espionage

The silence on the part of the international community with respect to any action that might be taken with regard to the possible breach of treaty obligations by the US is precisely the kind of silence to which WikiLeaks has drawn attention and of which “we the peoples” have a right to be exceptionally suspicious.

Denial and lying: The US is in an extremely difficult position since it is unable to prove that its diplomats are not lying when commenting on the second and third points. With regard to “lying”:

- it has long been recognized informally, especially at the United Nations, that diplomacy and espionage are intimately related
- one of Hillary Clinton’s predecessor’s [Colin Powell](#) is recognized as having participated in a hoax on the American people and the world in [erroneous testimony deliberately presented to meetings of the UN Security Council](#) in efforts to [build a case](#) for a UN resolution legitimating invasion of Iraq

The extreme significance of the latter example confirms the classic statement of [Henry Wotton](#) (1568-1639) defining an ambassador as being an: “honest man sent to lie abroad for the good of his country” (*Legatus est vir bonus peregre missus ad mentiendum rei publicae causa*). The contrary argument can of course be made, without being able to demonstrate its truth with respect to the United Nations. A former Australian diplomat makes such a case (Peter Ellis, *Whistleblowing: Lying For Your Country*, 2007):

Many senior diplomats have publicly disputed the archaic ‘lie abroad for their country’ wisdom, maintaining that good diplomacy is based on frankness and trust. The ineffectiveness of lying in diplomacy is one good reason for honesty, but more important is the corrosive impact lying by any public servant has on democracy at home. Any international case of political interest has the potential to become a domestic political matter, and if we were to accept State-sponsored lying overseas, who is to draw the line between lying for one’s country and lying for the political Party that happens to be in power?

The argument is necessarily self-serving, whatever the truth of the matter.

It is therefore to be expected that (like Colin Powell) Hillary Clinton, Susan Rice and Betty E. King are simply “lying for their country”. That is what they are paid for under the circumstances. They are completely unable to demonstrate the contrary.

Definitional game-playing: The situation is especially poignant in the case of Hillary Clinton, whose husband — as supreme authority in the US at that time — declared with respect to Monica Lewinsky that [*I did not have sexual relations with that woman*](#). (Bill Clinton, White House Press Conference, 26 January 1998). As noted in [commentary](#) on that statement:

The nature of the statement was called into question within hours when a skeptical reporter noted to White House press secretary [Mike McCurry](#) that the term “sexual relations” can be defined as meaning coitus, and asked whether the President and Lewinsky had been engaging in other forms of sex. McCurry replied, “I think every American that heard him knows exactly what he meant with the question. He didn’t leave any ambiguity in it whatsoever.” The controversy deepened when Clinton was revealed, in fact, to have had sexual contact with Lewinsky, although the issue (and the question of whether or not Clinton lied) remained a semantic one as to whether the words “sexual relations” includes oral sex. This and related disputes would lead to the [impeachment of Bill Clinton](#) and the settlement and conclusion of the legal case with [Paula Jones](#).

The question might be asked whether the US is now indulging in equivalent semantic games in defining its information acquisition strategy as *The US is not engaging in espionage on UN leadership*. As with Bill Clinton it will of course be difficult for the US to prove that the information acquisition authorised by Hillary Clinton is not an infringement of its UN treaty obligations. With respect to such “obligations”, the varieties of diplomatic “intercourse” might be usefully compared to the varieties of sexual “intercourse” — whether oral or otherwise. The strategy might be named as “definitional game-playing” (of which the UN is itself an expert) or as “conceptual gerrymandering”.

One example of possible game-playing is the argument that it is not in fact the diplomats as such who are engaged in spying but rather their agents, or the technology they put in place to enable espionage by “non-diplomatic” services of the US government. For example, with respect to [spying on the United Nations](#), in March 2003 it was alleged that the US National Security Agency had been spying on the United Nations Security Council including the phone conversions of Secretary-General Kofi Annan himself. The spying was committed by the US, the UK, and Australia, to gain intelligence to ensure UN support for the upcoming 2003 invasion of Iraq. Does this incident explain the reluctance of Australia to counter-balance the focus on Assange by officially raising the issue of US breach of UN treaty obligations?

Ironically, as explored separately, Julian Assange — as a focus of Hillary Clinton’s ire — is appropriately arguing *I did not rape those women* ([WikiLeaks and the First Global Condom War: political awakening through asymmetric psychodrama: US versus Assange](#), 2010). Hillary may well wreck her vengeance on Bill through Julian. As many have remarked, the Swedish law by which Assange is accused defines “rape” in a manner quite distinct from that of other countries. A good place for vengeance. In the form of an open letter, the commentary of [Michael Moore](#) is particularly enlightening ([Dear Government of Sweden...](#), [MichaelMoore.com](#), 16 December 2010).

Scapegoating: The displacement of media attention onto Julian Assange and WikiLeaks is a good strategy for the US — especially in providing a substitute for a decade of frustration

and expense in relation to Al-Qaida and Osama bin Laden, as the “most wanted” person on the planet. A scapegoat is required. It also avoids any consideration whatsoever of the implications noted by an editorial ([WikiLeaks: the man and the idea](#), *The Guardian*, 18 December 2010):

Millions of people around the world have glimpsed truths about their rulers and governments that had previously been hidden, or merely suspected. Hackers’ revenge The cables have revealed wrongdoing, war crimes, corruption, hypocrisy, greed, espionage, double-dealing and the cynical exercise of power on a wondrous scale.

Furthermore, in focusing on the criminal case against Assange, it avoids any consideration of the moral responsibility of those informed of such matters — given their complicity with threats to lives and livelihoods, as well as with the widespread practice of torture. How many lives could have been saved, and how much suffering avoided, were it not for the complicity of those entitled to read the diplomatic cables — to safeguard the competitive advantage of the US at the expense of others (*à la* Madeleine Albright)? Are diplomats required to have any sense of moral responsibility?

Identity theft: The alleged espionage on UN leadership (interpreted as “[identity theft](#)” in other contexts) — has been variously reframed as “legitimate”, with every probability that any formal, legal protest will be quashed, rather than treated as a serious breach of international treaty obligations (Julian Borger, [Embassy cables: Where does diplomacy end and spying begin?](#) *The Guardian*, 28 November 2010; Robert Booth and Ewen MacAskill, [US embassy cables: UN seeks answers from Washington](#), *The Guardian*, 28 November 2010). US is after all a principal source of UN funds, a Permanent Member of the UN Security Council, and the location of the UN headquarters. But with respect to the charges of “molestation” against Assange, it is amusing to note that the UN Secretariat has effectively become a “mole station”.

Ironically there is every possibility that the formulation by US of a case against Julian Assange will hold a degree of applicability (*mutatis mutandis*) for a case that could be made against US with respect to the deliberately authorised theft of confidential personality information — especially when appeals are made to principles in determining grounds for prosecution. Possibilities include appeals based as follows.

Principles

States (US)

case against Assange-WikiLeaks

Individuals (UN office holders)

case against US

Right to property

Property of states (theft, misuse)

Property of individuals (theft, misuse)

Privacy

Defence secrets

Confidential personal information

Enhancing security threats (espionage)

Enhancing threats to national security
Enhancing threats to personal security

Freedom of speech

As a constitutional provision
Universal Declaration of Human Rights

Court of public opinion: Whilst it is typically the case that means will be found by US to prosecute Assange, the stronger the case made against Assange, the greater the relevance of those arguments to a case against US with respect to the individuals in the UN, whether or not it can be made. US will be tried in the court of public opinion — and in the eyes of international civil servants — in the light of the principles they seek in defence of their collective interests in endeavouring to prosecute Assange. There is even an argument for a form of class action suit — perhaps through the [Permanent Peoples' Tribunal](#) — on behalf of “we the peoples”. This might even recognize what amounts to a form of “organized crime” in endeavouring to obtain personal details by theft. There is considerable irony in the fact that the embassy cables described the Russian regime as a “kleptocracy”. The latter argument could well be reinforced by claims that the generous use of quantitative easing constituted a theft of the resources of individuals (as taxpayers), then redistributed to corporate entities “too big to fail”.

Infringement of individual rights: Useful points have been made with respect to the aggression of US against its own people by Naomi Wolf ([Espionage Act: how the government can engage in serious aggression against the people of the United States](#), *The Huffington Post*, 10 December 2010). Should individuals be encouraged to extend their notions of “security” as is done with respect to “national security”, perhaps to include threats to: food security, job security, shelter, physical security, social security, health security? Are “we the peoples” having such “enhanced security” threatened by the actions of US?

The problem for the US Attorney General in the case of Assange-WikiLeaks is finding a legal basis to punish the distribution of classified information where the person involved is neither a US official nor the agent of a foreign power. The question is then what distinguishes Assange from any other person if the cables are forwarded by e-mail. Both questions are relevant in the case of UN office holders, additionally protected by international treaty (Daniel Dombe, [Case against Assange beset with problems](#), *Financial Times*, 7 December 2010; Daniel Nasaw, [Wikileaks: Barriers to possible US Assange prosecution](#), *BBC News*, 8 December 2010; Peter Spiro, [Wikileaks: Conundrums of Disclosure and Declassification](#) *Opinio Juris*, 8 December 2010).

The current focus on additional international treaty instruments to enable “leakers” and whistleblowers to be more effectively prosecuted raises the question of the corresponding provisions required to effectively prosecute states that infringe the rights of individuals — as with those of supposedly protected from identity theft by existing international treaties (Ron Synovitz, [WikiLeaks Case Fuels Debate Over Secrecy, Access Laws](#), *Radio Free Europe / Radio Liberty*, 8 December 2010). The latter comment cites Ben Saul to the effect that:

If you're going to create a rule designed to protect diplomatic communications

from disclosure... you need an exception to cover these cases where some information which is truly in the public interest ought to be disclosable and publishable. There shouldn't be any criminal penalty for such disclosures.

However Synovitz concludes with the question as to which existing international court — if any — would have the jurisdiction to rule on what is “in the public interest”. This question also applies in the case of US infringement of the rights of UN staff.

Curiously the only staff association initiative within the UN system that appears to have mentioned the implications of the activities authorised by Hillary Clinton is that of the UNDP in reacting to an earlier (unrelated) matter involving a whistleblower within the organization. As noted by George Russell ([U.N. Workers Call on Ban Ki-Moon to Reinstate Whistleblower](#), 1 October 2009):

The United Nations' five staff associations sent a stinging message to Secretary-General Ban Ki-moon Wednesday, demanding reinstatement of a whistleblower who lost his job after reporting financial and other irregularities in the program of the United Nations Development Program (UNDP) in North Korea. The resolution also condemned a “culture of impunity permeating the higher levels of the organization, complemented by a dysfunctional internal justice system.”

Paralysis of the UN: But how should a state be “punished” for acting against a person, even one protected by international treaty? In the case of WikiLeaks itself, interesting legal questions arise regarding the degree to which it even “exists” as a legal entity, as separately discussed in relation to both Al-Qaida and the Tea Party movement ([Reality and Existence](#), 2010). Only the UN offers a slight degree of recognition to international nongovernmental entities — provided they have some “consultative status” with the UN.

The total silence regarding the actions formally authorised by Hillary Clinton reinforces the view that the powers of the Office of the UN Secretary-General have long been severely constrained by US — and even more so following the daring, much-delayed, declaration by the previous holder of that office regarding the [legality of the Iraq war](#) ([Iraq war illegal, says Annan](#), BBC News, 16 September 2004; [Iraq war was illegal and breached UN charter, says Annan](#), The Guardian, 16 September 2004). It is this statement that determined the profile of the current incumbent. However the existence of higher levels of secrecy does raise the question as to how secret was the information regarding the [background](#) of his predecessor, Kurt Waldheim — and who was complicit in that secret?

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