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19 December 2010 | Draft

Alleged Breach of UN Treaty Obligations by US

Press coverage and commentary following WikiLeaks cable dissemination

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Introduction

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

A classified directive which appears to blur the line between diplomacy and spying was issued to US diplomats under Hillary Clinton's name in July 2009, demanding forensic technical details about the communications systems used by top UN officials, including passwords and personal encryption keys used in private and commercial networks for official communications. It called for detailed biometric information "on key UN officials, to include undersecretaries, heads of specialised agencies and their chief advisers, top SYG [secretary general] aides, heads of peace operations and political field missions, including force commanders" as well as intelligence on Ban's "management and decision-making style and his influence on the secretariat".

A parallel intelligence directive sent to diplomats in the Democratic Republic of the Congo, Uganda, Rwanda and Burundi said biometric data included DNA, fingerprints and iris scans. Washington also wanted credit card numbers, email addresses, phone, fax and pager numbers and even frequent-flyer account numbers for UN figures and "biographic and biometric information on UN Security Council permanent representatives".

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:

- Section 3: *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.*
- Section 30: *All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement.*

The 1961 [Vienna Convention on Diplomatic Relations](#), which covers the UN, also states:

- Article 22.2: *The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.*
- Article 27.2: *The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.*
- Article 29: *The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.*
- Article 30.2: *His papers, correspondence and, except as provided in paragraph 3 of article 31, his property, shall likewise enjoy inviolability.*

It is noteworthy that the US withdrew in 1986 from compulsory jurisdiction by the International Court of Justice (after the court ruled that its covert war against Nicaragua was in violation of international law). The US now only accepts the court's jurisdiction on a case-by-case basis. It is therefore presumably free to reject any complaint made by the United Nations under the 1946 Convention. The 1961 convention makes no specific provision for the settlement of disputes.

Overview

- [Wikipedia. *Spying on United Nations leaders by United States diplomats*](#)
- Ben Saul. *Don't Cry over WikiLeaks. The Age*, 2 December 2010
- *Wikileaks Documents Release*:
 - *'Political Meltdown For US Foreign Policy' -- Der Spiegel, the Guardian: Hillary Clinton signed directive to spy on heads of UN. DBKP*, 28 November 2010 (comparison of commentaries)
 - *Wikileaks: State Dept. Ordered Staff to Illegally Obtain DNA from UN Diplomats. DBKP*, 29 November 2010
- *Wikileaks: Beyond Good and Evil. Advocate* (CUNY Graduate Center). December 2010
 - Geoff Johnson. *WikiLeaks and American Democracy*
 - Conor Tomas Reed. *Singing the Bradley Electric: Whistleblowing and Social Movements in the 21st Century*
 - Michael Busch. *WikiLeaks and the Ethics of Secrecy*

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".

On disclosure of the secret directive the UN secretary general's acting deputy spokesman, Farhan Haq, immediately issued a pointed statement reminding member states that the UN relies on their adherence to treaties and agreements about respecting the institution's inviolability: "*The UN relies on the adherence by member states to these various undertakings.*" Furthermore, "*The UN charter, the Headquarters Agreement and the 1946 convention contain provisions relating to the privileges and immunities of the organisation*". The relevant clause of that convention reads:

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
- *US embassy cables: Washington requests biometric information for African leaders.* *The Guardian*, 28 November 2010
- Michael K. Busch. *Wikileaks: The United Nations.* 28 November 2010
- *US Runs Secret Intelligence Campaign Directed Against United Nations.* *Light Sound Dimension*, 28 November 2010
- Mark Mazzetti. *U.S. Expands Role of Diplomats in Spying.* *The New York Times*, 28 November 2010
- *Orders from Clinton US Diplomats Told to Spy on Other Countries at United Nations.* *Spiegel Online*, 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
- Daniel Tencer. *Hillary Clinton ordered diplomats to spy on UN: WikiLeaks docs,* *Raw Story*, 28 November 2010
- *US Diplomats Told to Spy on Other Countries at United Nations.* *BlackListedNews for Independent Minds (Spiegel)*, 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
- *US diplomats told to spy on foreign dignitaries,* *Khaleej Times (AFP)*, 29 November 2010
- *US diplomats asked to spy.* *The Sydney Morning Herald (AFP)*, 29 November 2010
- *US diplomats ordered to spy on UN leadership,* *Global Times (Xinhua)*, 29 November 2010
- Phyllis Bennis. *WikiLeaks Shows No "New Mind-Set" in US Foreign Policy: Clinton ordered spying on UN leaders shows Bush style still around.* *TheRealNews*, 29 November 2010
- P.J. Aroon. *Clinton ordered American diplomats to spy on U.N. officials.* *Foreign Policy*, 29 November 2010
- Lachlan Carmichael. *US diplomats asked to spy on foreign dignitaries: WikiLeaks.* *AsiaOneNews (AFP)*, 29 November 2010
- *US Spy Diplomats violated International law.* *Daily Mail Times*, 29 November 2010.
- *WikiLeaks Founder Calls for Hillary Clinton to Resign.* *From the Left*, 30 November 2010
- Neal Ungerleider. *State Dept: Give Us Your Retinal Scans, Your Credit Card Numbers.* *Pitts Report*, 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
- *UN slams US over 'espionage' revelations.* *Ynetnews*, 30 November 2010
- *CIA behind U.S. envoys' espionage wishlist.* *Reuters*, 2 December 2010
- *Should Hilary Clinton face action for UN espionage?* *www.cablegate.com*, 3 December 2010
- *WikiLeaks' Founder Demands Obama's Resignation Over UN Espionage.* *www.dbune.com*, 6 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".

Citing specific texts in the State Department Directive, which had been interpreted as an attempt to spy on UN personnel, Pincas Jawetz argues that [when read carefully, seem rather to have been a program of counter-intelligence](#) (*Sustainabilitank.info*, 2 December 2010)

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 500,000 children in Iraq as a result of sanctions: "*we think the price is worth it*".

There is no indication whatsoever that the secret directive has been rescinded. But, if it had, this fact would necessarily be classified.

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.*
- *US diplomats are not spies: P J Crowley*. Press Trust of India, 29 November
 - "Diplomats collect information that shapes our policies and actions. Diplomats for all nations do the same," (State Department spokesman, P J Crowley)
 - "Contrary to some WikiLeaks' reporting, our diplomats are diplomats. They are not intelligence assets,"
- *White House: Hillary Clinton Didn't Order Diplomats to Spy*. *U.S. News*, 1 December 1, 2010
- 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.

It is unclear how to reconcile such assertions with the content of the original directive to diplomats, unless the acquisition of private biometric information -- by subterfuge or theft, if necessary -- is to be considered as a legitimate activity of diplomats.

As remarked by Robert Scheer (*Hillary Gets Wiki-Served*. *CommonDreams.org*, 1 December 2010):

Instead of disparaging the motives of the leakers, Hillary Clinton should offer a forthright explanation of why she continued the practice of Condoleezza Rice, her predecessor as secretary of state, of using American diplomats to spy on their colleagues working at the United Nations. Why did she issue a specific directive ordering U.S. diplomats to collect biometric information on U.N. Secretary-General Ban Ki-moon and many of his colleagues?....

The spying effort derived from concern that U.N. rapporteurs might unearth embarrassing details about the U.S. treatment of prisoners in Guantánamo as well as in Iraq and Afghanistan. One of the directives demanded 'biographic and biometric' information on Dr. Margaret Chan, the director of the World Health Organization, as well as details of her personality and management style. Maybe she's hiding bin Laden in her U.N. office.

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, consistent with the [incident in March 2003](#) involving the spying of US National Security Agency on the United Nations Security Council including the phone conversions of Secretary-General Kofi Annan himself to gain intelligence to ensure UN support for the upcoming 2003 invasion of Iraq
- 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

Precedent of 2003: 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 (as with the March 2003 incident) 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. For initial commentary on the 2003 incident and its aftermath, see:

- Martin Bright, Ed Vulliamy and Peter Beaumont:
 - *Revealed: US dirty tricks to win vote on Iraq war*, *The Observer*, 2 March 2003
 - *US plan to bug Security Council: the text*, *The Observer*, 2 March 2003
 - *UN launches inquiry into American spying in New York*, *The Observer*, 9 March 2003
- Martin Bright (*GCHQ arrest over Observer spying report*, *The Observer*, 9 March 2003)
- Harvey Thompson (*Britain aided US in spying on UN delegates*, *World Socialist Website*, 13 February 2004)
- Murray Horton (*ECHELON Spies On The World: Britain Drops Charge Against GCHQ Whistleblower*, *Peace Researcher*, 29, June 2004)
- Jason Leopold (*Rice authorized National Security Agency to spy on UN Security Council in run-up to war, former officials say*, *TheRawStory*, 27 December 2005)
- *NSA Wiretap Scandal Engulfs Condi, MSM*, *The Booman Tribune*, 27 December 2005
- Paul Craig Roberts (*Bush's Witchhunt Against Truth-Tellers*, *CounterPunch*, 2 January 2006)
- Paul Rosenberg (*Wiretaps Spur Impeachment Talk*, *Random Lengths News*, 19 January 2006)

The Observer report noted at that time:

While the bugging of foreign diplomats at the UN is permissible under the US [Foreign Intelligence Surveillance Act](#) [FISA] it is a breach of the Vienna Convention on Diplomatic Relations, according to one of America's leading experts on international law, Professor John Quigley of Ohio University. He says the convention stipulates that: '*The receiving state shall permit and protect free communication on the part of the mission for all official purposes... The official correspondence of the mission shall be inviolable.*'

The silence may be due to a poorly recognized evolution in government and corporate policy on collection of biometric data -- in future to be considered "normal", as reviewed **prior** to the WikiLeaks disclosure (Ethan Jacobs, *Big Brother: Biometric Tyranny and DNA*

Databases, Global Research, 15 November 2010). Note also the subsequent comment of Dan Vorhaus (*Surreptitious Genetic Testing: WikiLeaks Highlights Gap in Genetic Privacy Law, Genomic Law Report*, 9 December 2010).

US foreign surveillance provisions: Any questions of "legality" from a US perspective need to be seen within the context of provisions made prior to, and subsequent to, the 2003 incident:

- According to [William Cooper](#) (*Behold A Pale Horse*, Light Technology Publications, 1991, pp. 111-112) the Senate Intelligence Authorization Act S.B. 2834 (passed on 4 August 1991). Title VII: Gives the president power to initiate covert actions (this has never before been given to the President); prevents Congress from stopping the President's initiation of covert actions; allows the President to use any federal "departments, agencies, or entities" to operate or finance a covert operation; empowers the President to use any other nation or private contractor or person to fund or operate covert action; redefines covert actions as operations "necessary to support foreign policy objectives of the United States," a definition that is so vague and broad as to be essentially unlimited; for the first time officially claims the right of the United States to secretly interfere in the internal "political, economic, or military affairs" of other countries and in direct and flagrant violation of international law; requires that the President prepare and deliver written finding to the Intelligence committees of Congress but allows the President to omit "extremely sensitive matters" and authorizes the President to claim executive privilege if Congress asks too many questions.
- As of June, 2003, it was indicated that Congress would allow the NSA to exempt itself from all Freedom of Information Act requests dealing with files that document the means by which foreign intelligence or counterintelligence is collected through technical systems. (In other words, the details of Echelon would become off-limits from FOIA requests). Apparently, similar exemptions allowed in the past for the operational files of other agencies, such as the National Reconnaissance Office, led to those agencies categorizing all of their directives as "operational". It is possible the NSA will continue this trend and over-apply the exemption. (*Spy Agencies Abuse Freedom of Information Exemptions but Congress may grant new one to intercepts agency; Proposed FOIA Exemption Would Provide National Security Agency With Virtually Unchecked Power to Keep Records Secret, National; Security Archive*, 11 June 2003).
- Jeff Fecke (*House passes FISA bill with no telecom immunity, The Minnesota Independent*, 14 March 2008)
- Massimo Calabresi (*How Bush's Treaty Power Grab Failed, Time*, 27 March 2008) notes:
Though the U.S. abides by most treaty obligations, its reputation has been seriously damaged after eight years of high profile snubs by the Bush Administration -- starting with the abrogation of the Anti-Ballistic Missile treaty, and peaking with Bush's war on terror end-runs around the Geneva Conventions and the Convention Against Torture. In fact, Bush's attempts to expand presidential power... have exposed to Americans and foreigners alike the real problem: the weakness of the U.S. system for complying with international law.
- A study prepared jointly by two non-profit groups, the Institute for Energy and Environmental Research (IEER) and the [Lawyers' Committee on Nuclear Policy](#) (LCNP) on the *Rule of Power or Rule of Law? An Assessment of U.S. Policies and Actions Regarding Security-Related Treaties* (2002) noted that the systematic US regard of its treaty obligations was jeopardizing nuclear nonproliferation and global security.

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?

This 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.

It is presumably impossible to distinguish by any legal process between the "denials" by the agents of the US from the "denials" of those variously identified in the diplomatic cables as being engaged in questionable activities -- as for example the reaction of President [Omar al Bashir](#) of Sudan (*WikiLeaks cables: Sudanese president 'stashed \$9bn in UK banks'*, *The Guardian*, 17 December 2010).

Definitional game-playing: The situation regarding denials 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 the alleged [spying on the United Nations](#), in March 2003 by the US National Security Agency. The spying was allegedly committed by the US, the UK, and Australia. Does this incident explain the reluctance of Australia to counter-balance the focus on Assange byofficially 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 from its own abuse onto that of 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. 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, the strategy 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 or only to use it as a rhetorical device?

The moral dimension is usefully framed by Christian Caryl ([WikiLeaks in the Moral Void](#), [The New York Review of Books](#), 7 December 2010). Its paradoxical nature is also highlighted separately ([Mirroring Global Moral Equivalence: US contra Julian Assange versus China contra Liu Xiaobo](#), 2010).

It is curious that **withholding assistance to persons in danger** is only considered a crime in some national legislations. It is not a crime defined in international law -- nor has it been extended to include **withholding information of relevance to persons in danger**. Those who practice it are protected by "diplomatic impunity", whilst any evidence of their malfeasance is held to be a secret vital to their own security. As demonstrated in the case of [Bradley Manning](#), Julian Assange and WikiLeaks, those who endeavour to make apparent such information are themselves subject to criminalisation.

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"** -- and that whilst "den of spies" is a recognized expression, moles in nature also are said to live in "dens".

Ironically there is every possibility that the intense efforts by UA authorities to formulate 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.

and against

Comparability of cases against Assange-WikiLeaks and against USA?		
Principles	States (US)	Individuals (UN office holders)

	case against Assange-WikiLeaks	case against US
<i>Right to property</i>	Property of states (theft, misuse)	Property of individuals (theft, misuse)
<i>Privacy</i>	Defence secrets	Confidential personal information
<i>Enhancing security threats (espionage)</i>	Enhancing threats to national security	Enhancing threats to personal security
<i>Freedom of speech</i>	As a constitutional provision	Universal Declaration of Human Rights

Of particular interest is the focus of the US on whether Assange was seeking to cause harm to the US, or was complicit in such efforts. This focus could clarify the more general international legal arguments as to whether a legal person, recognized in international law (**whether individual, association, corporation or government**) caused harm to another legal person, whether immediately or at some future time, by :

- withholding assistance to a person in danger
- withholding information of relevance to a person in danger
- acquiring information with intent to harm a person (and especially when the information is considered to be the property of the person it is intended to harm)

In the case of "persons" not recognized as existing in international law, as with WikiLeaks (or Al-Qaida) or those without adequate representation, the efforts of the US are to be welcomed in helping to clarify what is required to demonstrate their "existence", as discussed separately (*Cultivating Global Strategic Fantasies of Choice: learnings from Islamic Al-Qaida and the Republican Tea Party movement*, 2010). The analysis should help to demonstrate the nature and significance of "harm" between actors variously recognized -- despite difficulties experienced in defining "aggression", "violence" and "terrorism", and avoidance of definitions of "suffering". This would provide a legal framework for considering the US policy previously articulated by [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*".

Of particular interest is the extent to which the arguments developed by the US will provide a legal case for framing the extent to which the US may be understood as causing (or intending to cause) "harm" to the United Nations, individuals working therein, or "we the peoples" in whose name they are acting -- whether or not the contrary is claimed. Especially interesting will be the articulation of exceptions to any more general principles with respect to the "security" of that legal person.

Court of public opinion: Whilst it is typically the case that means will be found by US to prosecute Assange (or to legitimate his "elimination"), **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 (or those on behalf of whom they are acting), whether or not it can be made before any court of law.**

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 -- as with 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 Dombé, *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: Comundrums 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. This follows naturally from the fact that US contributes 22 percent of the UN's regular budget and 25 percent of the UN's peacekeeping operations budget. Further more, as noted by Wendy Wright (*U.N. Gets New Oversight*, *American Thinker*, 15 December 2010) the new chairperson of the US House Foreign Affairs Committee has declared that she plans to use US contributions to international organizations as leverage to press for real reform of those organizations, such as the UN, seeking to making the US contributions voluntary until the US creates an office to audit the UN for transparency and waste. Neither the UN, nor its staff, can afford to protest any alleged breach of treaty obligations -- nor can other Member States.

A degree of constraint is also evident following the daring, much-delayed, declaration by the previous holder of that office regarding the [legality of the Iraq war](#) (*Iraq war illegal, says Amman*, *BBC News*, 16 September 2004; *Iraq war was illegal and breached UN charter, says Amman*, *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 controversial [background](#) of his predecessor, Kurt Waldheim -- and who was complicit in that secret? Are secret constraints a prerequisite for the role?

Exploration of legal possibilities

To the extent that the directive of the US Secretary of State can be construed as theft of the private property of a UN staff member, bodies possibly competent to consider both individual and collective complaints include:

- [United Nations Administrative Tribunal](#)
- [United Nations Appeals Tribunal](#)

Staff members within the UN system are represented by a variety of staff associations who could consider the nature of any formal complaint to be made against the actions affecting them of a member country of the UN system. Such bodies include:

- staff associations and unions of the various Specialized Agencies (ILO, WHO, UNESCO, FAO, etc)
- [UNOG Coordinating Council](#) (Geneva)
- [Coordinating Committee for International Staff Unions and Associations of the United Nations System](#) (CCISUA) [[membership](#)]

Of relevance in relation to any such representation is the experience of the [New Wood Staff Union](#) with the objective of ensuring a coherent application of international human rights and labour norms with regard to all civil servants employed in the international organizations (Pearl Lang, *Duplicity at Work Or ... How the UN falls short of its own principles*, 2007). The latter is consistent with an earlier commentary ([Shirley Hazzard](#), *Defeat of an Ideal: a study of the self-destruction of the United Nations*, 1973).

Bodies which might have a degree of interest in any breach of UN treaty obligations include:

- [International Bar Association](#)
- [International Commission of Jurists](#)
- [International Council of Jurists](#)
- [International Law Association](#)
- [International Union of Lawyers](#)
- [International Association of Young Lawyers](#)
- [International Association of Lawyers](#)
- [International Association of IT Lawyers](#) (organizes International Conference on Legal, Security and Privacy Issues)
- [International Association of Democratic Lawyers](#)
- [International Association of People's Lawyers](#)
- [European Democratic Lawyers](#)
- [European Association of Lawyers for Democracy and World Human Rights](#)
- [International Criminal Defence Attorneys Association](#)
- [Avocats Sans Frontières](#)
- [Lawyers without Borders](#)
- [Lawyers for Social Responsibility](#)
- [Project on International Courts and Tribunals](#)

- [International Center for Transitional Justice](#)

Relevant documents might include:

- Ruth Mackenzie, Kate Malleson, Penny Martin, and Philippe Sands. *Selecting International Judges: Principle, Process, and Politics*. Oxford University Press, 2010 as variously reviewed:
 - David Bosco, *Uncovering international judges*, *Foreign Policy*, 10 September 2010
 - *In the dock: how are international judges chosen?*
- Tom Perriello and Marieke Wierda. *Lessons from the Deployment of International Judges and Prosecutors in Kosovo*. 2006
- Radical lawyers:
 - Jonathan Black. *Radical lawyers; their role in the movement and in the courts*
 - Jon Robins. *Whatever happened to the radical lawyers?* *The Times*, 12 November 2009
 - Marcel Berlins. *The New Statesman Profile: the radical lawyers*. *New Statesman*, 5 March 1999
 - Simon Fodden. *Are there radical lawyers in Canada?*. 12 November 2009
 - SA Scheingol. *Radical Lawyers and Socialist Ideals*. *Journal of Law and Society*, 15, 1, 1988

Of interest in any such exploration is any conclusion to the effect that the individuals, whose private information is obtained following such a directive, have no legal recourse and no protection whatsoever against such initiatives.



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