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# **State Responsibility for the Torture of Julian Assange**

## **Speech by Nils Melzer, UN Special Rapporteur on Torture, at the German Bundestag in Berlin, 27 November 2019 (English translation)**

Ladies and Gentlemen,

Thank you for giving me the opportunity to contribute to this event at the German Bundestag. In my view, the legal responsibility for Julian Assange's psychological torture must be analyzed in two parts, namely a first phase relating to the period of his diplomatic asylum at the Ecuadorian Embassy in London, and a second phase relating to his current detention by the United Kingdom.

### **First phase: political persecution and Embassy asylum**

As is well known, I visited Mr. Assange together with my medical team on 9 May 2019 in Belmarsh maximum security prison. This was about three or four weeks after his arrest on 11 April. In the course of a three-hour medical examination and one-hour interview with me, we found that he showed all the symptoms that are typical of persons having been exposed to psychological torture for a prolonged period of time. These were very serious symptoms that were already measurable physically, neurologically and cognitively.

We then had to ask ourselves what could have caused these symptoms. We knew that this man had been confined in a highly controlled environment within the Ecuadorian Embassy for more than six years. Given that, in this environment, he had been exposed only to a very limited number of influences, the factors which could have triggered these symptoms could be determined with a high degree of certainty. In fact, the relevant environment had been created primarily by four States. First and foremost, this included the United States, which

wanted Julian Assange's extradition from the start, although they did not, of course, publicly announce their intentions. Julian Assange's greatest fear had always been to be extradited towards a show trial in the United States and then to be sentenced, most likely, to life in a high-security prison under the so-called "Supermax" regime, which my predecessors and I have consistently classified as inhumane. Assange's fear had always been ridiculed as "paranoia", but on the very day he first stepped out of the Ecuadorian Embassy, it did not take the United States more than an hour to submit their extradition request to the United Kingdom. By no means had Assange's fears been "paranoid". On the contrary, he had been very realistic as to his situation and the risks he was facing. Assange's looming extradition towards serious violations of his human rights in the United States is the basic threat scenario that runs through the entire case from the beginning to this day.

In addition, there were the Swedish procedures from 2010 to 2019. As I have stated in various official communications to the Swedish government and elsewhere, these procedures have been carried out in a severely arbitrary manner. This was a "preliminary investigation" for suspected rape, which for more than nine years was not even able to produce enough evidence for an indictment, and which now, after almost a decade, has been silently closed for the third time based on precisely that recognition. This procedure forced Julian Assange to apply for asylum at the Ecuadorian embassy, turning him into a political refugee unable to leave the premises. Importantly, he repeatedly offered the Swedish authorities that he would come to Sweden and participate in the criminal proceedings against him, if only Sweden were prepared to guarantee that he would not be extradited onwards from there to the United States. This would have been feasible without any difficulties, because the US proceedings were completely unrelated to those in Sweden. However, the Swedes persistently refused to give this assurance, for formalistic reasons incompatible with common diplomatic practice. The way in which Sweden conducted the investigation against Julian Assange contributed decisively to ensuring that he could no longer leave the Ecuadorian Embassy. The British, for their part, also played a decisive role in supporting this policy. In 2013, when Sweden finally considered giving up under pressure from their constitutional court, the British Crown Prosecution Service, in a correspondence which has leaked to the public, encouraged the Swedes not to close their investigation under any circumstances, literally urging them not to get "cold feet". Well, it seems that, after more than nine years, the Swedish Prosecution Service did get "cold feet" after all.



Moreover, in 2017, there was a change of government in Assange's country of asylum, Ecuador. The new president, Moreno, aimed at reconciling with the United States, and the Assange extradition was certainly a bargaining chip in this context. From this date, the mobbing also began inside the Embassy, where diplomatic and security personnel made Julian Assange's life increasingly difficult. We also know a great deal today about the constant, very extensive surveillance to which he was subjected within the Embassy, including his private sphere, his social visits and

his interviews with lawyers and doctors. It has to be emphasized that relentless surveillance for 24 hours a day is often used deliberately in psychological torture in order to drive victims into paranoia, except that the victim's perception actually corresponds to reality.

Four states, the United States, the United Kingdom, Ecuador and Sweden, all contributed to producing this situation. On 11 April 2019 Julian Assange was finally deprived of both asylum and citizenship by the Ecuadorian government without any form of due process, and he was handed over to the British in clear contravention to international and Ecuadorian constitutional law. As we know, he was then immediately arrested by the British police, brought before a British judge within hours, and convicted of a bail violation dating back to 2012 in a 15-minute hearing without being granted the necessary time to prepare with his defense counsel.

## **Second phase: British detention and judicial arbitrariness**

With the arrest by the United Kingdom, the second phase begins, which unfortunately led to precisely the dramatic deterioration in Julian Assange's health that my medical team and I predicted after my visit in May. We specifically warned that Julian Assange's health, both mentally and physically, would soon spiral downwards if the pressure on him continued, his situation did not improve, and his arbitrary treatment was not put to an end. Finally, on 1 November 2019, I felt compelled to ring the alarm again and to express serious concern that the continued arbitrariness and abuse of Julian Assange may well end up costing his life.

It must be stressed that this warning is not an exaggeration. Psychological torture is not torture "light". Psychological torture aims directly at a person's personality and deliberately tries to destabilize him by making his environment arbitrary, making everything unpredictable, isolating him, depriving him of social contacts and all means of reaffirming his human dignity. All of this is systematically withdrawn from the torture victim over a prolonged period of time, until such abuse finally leads to cardiovascular collapse, nervous breakdown or irreversible neurological damage. These are very serious forms of ill-treatment, but they are carried out in such a way that the individual components look almost harmless on their own. In combination and with increasing duration, however, they have a murderous effect.

This is what has been happening, and what keeps happening, to Julian Assange since his arrest and incarceration in Belmarsh Prison. On the very day of his arrest, he was convicted for bail violation, a minor offence which in the United Kingdom generally entails a mere fine, but certainly not a long jail sentence. Indeed, unless someone committed a crime during the bail violation, not much will happen in practice. Julian Assange, however, was sentenced to 50 weeks of imprisonment, just shy of the maximum sentence of one year in

prison, for a breach of bail that he was unable to avoid if he wanted to accept diplomatic asylum at the Ecuadorian Embassy. Requesting asylum is one of the most fundamental human rights of anyone who is politically persecuted. So, if diplomatic asylum granted by a UN member state inevitably results in a bail violation in one of the persecuting countries, then such asylum is, if not a justification, certainly a mitigating circumstance and must be considered as such. Thus, already the very fact that Julian Assange has been sentenced to 50 weeks in prison by the United Kingdom illustrates the arbitrariness of this procedure.

Due to time constraints, I cannot list all British due process violations, both in the criminal proceedings for bail violation and in the US extradition proceedings. Most notably, however, we have seen documented conflicts of interest and overt bias on the part of judicial officials, including insults and abuse in the courtroom. Moreover, Julian Assange's access to legal documents and lawyers continues to be systematically obstructed or even denied, so that in both cases he has not been able to prepare his own defense. Where is here the rule of law? Where have we ended up when a defendant is no longer allowed to read his indictment before he is asked to respond to it? When I first found out about this, I thought this was not possible and did not believe my own eyes!

As we correctly predicted, Julian Assange had to be transferred to the prison's medical department only nine days after our visit. Since then he has been almost completely isolated under a very strict prison regime, even though he has already served his prison sentence for bail violation, and is now only in preventive detention to avoid his escape during the American extradition process. Obviously, to achieve this limited purpose, there is no need for a maximum-security prison, and certainly not for isolation. Rather, it would be clearly sufficient to impose house arrest or a similar, open regime where he has access to his family and lawyers, where he can prepare his defense, and where he can also correspond with the press.



But that, of course, is exactly what the involved states do not want: Nobody should be allowed to shine a spotlight on what this is really about. Because it is about the rule of law, it is about democracy, it is about the fact that we simply cannot afford that state power remains unsupervised. That is precisely the reason why we introduced the separation of powers over 200 years ago. And if the separation of powers no longer works in practice, then we need an independent press as the "fourth power" in the state. And if the press no longer performs this monitoring function, well then the relevant

systemic dysfunctions may have to be exposed by organizations such as WikiLeaks. These are very fundamental elements of good governance that must be protected.

# Meeting with the German Federal Foreign Office

Given that I have been asked the question by Members of Parliament this morning, I do not want to close without mentioning that, to my knowledge, the German Federal Foreign Office has been repeatedly asked at press conferences for their views on my reports in the Assange case. So, yesterday, the Federal Foreign Office invited me for a meeting with their human rights department. This meeting has taken place, but was not particularly productive. In fact, I was told that my reports still had not been read. I have therefore encouraged the Federal Foreign Office to read my reports before asking to discuss them with me. I hope this will be taken seriously because, after all, the purpose of my reports is precisely that they are being read — Thank you!