

Why the European Union Is Passive in the Extradition Case Against Julian Assange

A case study on human rights, democracy and international relations

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Introduction

Julian Assange through WikiLeaks rose to fame in 2010 after his publication of classified military information pertaining to US war crimes and human rights violations in the course of the Iraq and Afghan wars. Of particular importance, one that predicated Assange’s controversial arrest in Britain is an incriminating footage of American soldiers shooting blankly at Iraqi civilians and Reuters news staff in 2007.

WikiLeaks famously dubbed the video as “Collateral Murder” essentially because the deliberate killing of a wounded civilian being separated from a targeted van is downright murder[1].

Following the publication of US war logs, Assange received both compliments and vitriol — one for imperiling personal security and reputation for the sake of truthful journalism, and the other for allegedly risking other people’s safety and endangering national security. The debate concerning the nature of Assange’s activities surfaced, raising questions of whether he is a journalist, a whistleblower or a hacker, and whether or not he should be extradited to the United States to face criminal charges.

The case of Julian Assange is one that is far more complex and controversial than is imaginable. While the topic per se is arguably more legal than political, the centrality of the political motivation behind the extradition request from the US simply cannot be undermined. In 2017, former CIA Director and Secretary of State Mike Pompeo blasted WikiLeaks as a “non-state, hostile intelligence service often abetted by state actors” and called Assange as “darling of terrorist groups”[2]. Further, then Vice President Joe Biden branded him as a “high-tech terrorist”[3]. Another former CIA Director Leon Panetta revealed in an interview that the US prosecution of Assange is a way of sending a “threatening message to whistleblowers and journalists” who expose dirty secrets of the US

government[4]. In this respect, the legal underpinnings of the case are of lesser significance in this essay than its political aspect.

Assange's extradition has both personal and global ramifications vis-à-vis human rights and democracy, particularly on press freedom. The European Union has a key role in the obstruction of the American pursuit of Assange and should therefore play its part as a legitimate institution whose *raison d'être* is the promotion and preservation of global norms. While several international human rights organizations[5], civil society groups[6], individual authorities[7] and even the Council of Europe[8] stood for Assange and criticized the extradition case as a crackdown on investigative journalism, the EU as a collective entity could have employed a variety of its human rights instruments to interfere in the criminal proceedings but nevertheless remains mum and passive. The EU and US have long history of diplomatic relations that date back to 1953. Theirs is "one of the most important bilateral relationships in the world"[9]. Against this background, this essay argues that the EU as a rational actor has goals, interests and strategies of its own; the silence surrounding Assange's extradition case represents a double standard in its commitment, or the lack thereof, to the protection of human rights and democracy that instead of being comprehensively integrated into its external service, in actuality it is just a variable. Realpolitik precedes any normative standard in international relations (IR) insofar as the EU, US and Assange are concerned.

Assange and his extradition

Julian Assange is an Australian citizen, residing and working in the United Kingdom. In 2006, he founded WikiLeaks, an anti-secrecy website that "specializes in the analysis and publication of large datasets of censored or otherwise restricted official materials involving war, spying and corruption." [10] The ongoing detention of Assange involves three states: Sweden, the United Kingdom and the United States. However, the present uproar — and the crux of this essay — relates more importantly to the imminent extradition case involving the UK and the US.



Since the 2010 WikiLeaks publication of massive classified documents dumped by a US military personnel later known to be Chelsea Manning (formerly Bradley Manning), Assange has been in the crosshairs of the US government. Fearing US extradition[11], he took refuge at the Ecuadorean embassy in London after granted political asylum in 2012 by then Ecuadorean President Rafael Correa. Changes in the Ecuadorean government (new President Lenin Moreno) prompted his arrest[12] and transfer to Belmarsh Maximum Security Prison in London in 2019 where he has since been detained unjustly. According to a thorough medical assessment, Assange showed symptoms such as "extreme stress, chronic anxiety, and intense psychological trauma" which are "cumulative effects of what can only

be described as psychological torture”[13]. Additionally, calls for medical attention concerning his physical ailments have gone unheeded[14]. His mental health has also deteriorated over a long period of solitary confinement[15].

The US extradition request is based on the said publication whereby Assange faces 17 counts under the Espionage Act and one count of conspiracy, allegedly assisting Manning to hack a US Department of Defense computer[16]. His extradition has serious human rights implications that go beyond his individual case. Apart from potential violation of the European Convention on Human Rights (ECHR), particularly Article 3[17], 5[18], 6[19], and 7[20], the US indictment has a chilling effect on press freedom which is in violation of Article 10[21]. It should be noted that the information leaked by Manning is of public interest and should therefore be taken with absolute transparency and democratic accountability. It is the public’s right to be informed of government wrongdoing. This is the cornerstone of media freedom[22]. Assange through WikiLeaks has been fulfilling this endeavor for more than a decade and has in fact received numerous international awards for its crucial contribution to journalism[23]. For the purpose of this essay, it is worth iterating that the extradition case is politically motivated[24]. Deciding on the request based on ‘humanitarian’ promises of Assange’s fair and just treatment downplays the mendacity of the US government as revealed by historical precedents[25].

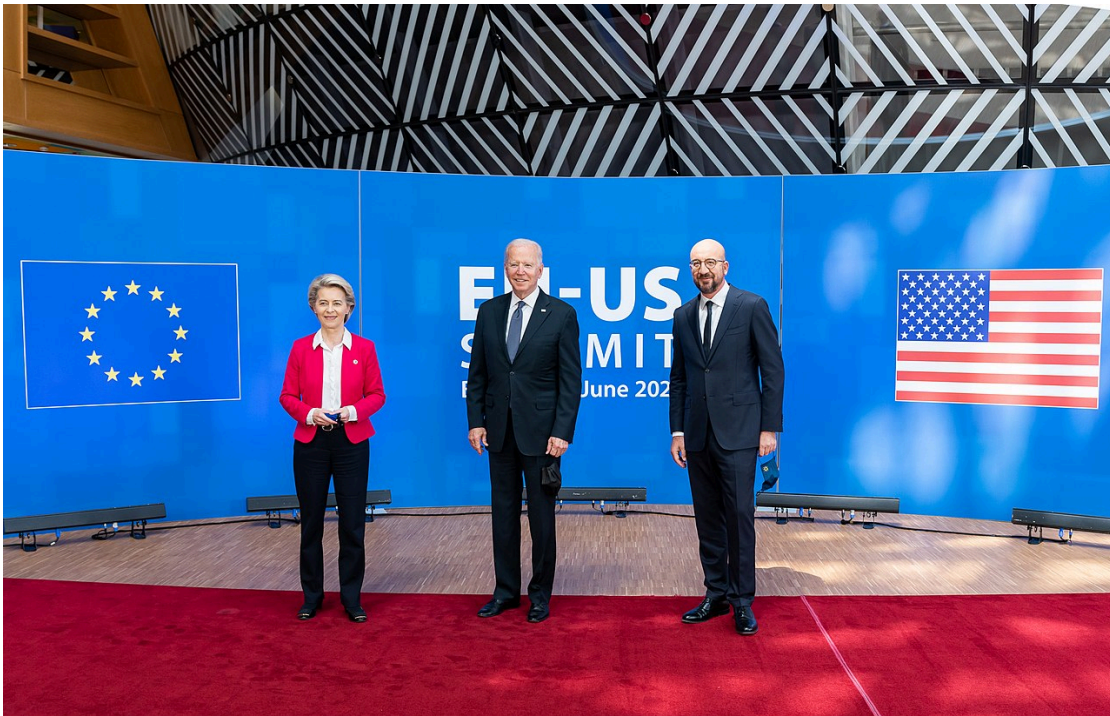
The EU and human rights and democracy

The protection of human rights and democracy is the EU’s *raison d’être*. The integration of human rights norms and democratic values into its external relations demonstrates what constructivists call as “moral proselytizing”[26]. It strategically partners with local NGOs in an effort to promote the localization of these norms in third countries[27]. Its bilateral relations with foreign states are ostensibly predicated on these norms, in such a way that either the EU withdraws from the cooperation or that states conform. These endeavors, however, are futile without institutions and legal rules to enforce and facilitate.

The EU’s institutional architecture vis-à-vis its external relations is comprised of the EU Parliament, European Commission, European External Action Service (EEAS) and the EU DevCo[28][29][30]. Nakanishi (2018) has added the European Council (EC) to the active organs that oversee the promotion of human rights and democracy in its external relations[31]. These formal EU institutions are compounded with regimes that facilitate the enforcement of norms and values; among them are global human rights sanctions regime[32] and trade regime[33].

Members of the EU are legally bound by the European Convention on Human Rights (ECHR) which is consistent with the Universal Declaration of Human Rights (UDHR). ECHR is enforceable by the European Court of Human Rights (ECtHR).

EU-US relations



President of the European Commission Von der Leyen (left), US President Biden (center) and President of the European Council Michel (right) in Brussels in June 2021 (Licensed under the public domain)

According to the European Parliament[34], the EU and the US “share the values of democracy, human rights, the rule of law, and economic and political freedom, and have overlapping foreign policy and security concerns”. On the one hand, they have established the Transatlantic Legislators’ Dialogue or the collaboration between the European Parliament (EP) and the US Congress narrowly defined. Members of the EP and the US House of Representatives meet biannually to discuss matters of mutual concern. This interparliamentary process dates back to 1972. On the other hand, the EU and the US are each other’s largest investors and valuable trading partners[35]. The US was the EU’s primary goods export destination in 2020 and second largest goods import partner[36]. They enjoy one of the lowest average tariffs (under 3%) in the world[37]. Moreover, US investment in the EU is “three times higher than in the whole of Asia” and the EU investment in the US is “eight times higher than in India and China combined”[38]. Essentially, the EU and US investments are the real driver of the transatlantic relationship[39].

Furthermore, in 2020 the EU through the European Commission and High Representative/Vice President for Foreign Affairs and Security Policy had a renewed vigor vis-à-vis the EU-US relations. It drafted a proposal for a new, forward-looking transatlantic agenda that is centered on COVID-19, climate change, technology, trade and standards, but also on democracy and security. The EU vows to work closely with the US in fighting corruption, authoritarianism, and human rights abuses around the world.

The EU in the extradition case of Assange

The case of Julian Assange is a strong representation of the kind of (Western) democracy that prevails in the world today — one that is characterized by secrecy, impunity and a weak justice system being easily overtaken by powerful interests; or that rule of law is undermined, narrowly defined. Humanitarian concerns surrounding the extradition case raise serious questions over the credibility of the EU as an advocate for human rights and

democracy. What has the regional institution as a collective entity done that demonstrates its commitment to normative values?

In 2012, credit card companies that processed donations for WikiLeaks introduced a blockade that resulted in a major blow to the organization's revenue and fund[40]. The European Commission simply affirmed the move by suggesting that it has not violated EU anti-trust rules. As a representative of 27 sovereign states, the EU has not issued a communique announcing its opinion on the Assange case. A group of Members of Parliament called on the European Commission to "intervene and stop the extradition"[41] but due to the insufficient number of signatories, the request fell on deaf ears. In what is referred to as a landmark law, the EU Parliament passed in 2019 an EU-wide directive that mandates the protection of whistleblowers in response to recent events such as the bombshell revelations of Edward Snowden. Two years on, the directive has hardly any implication in the Assange case albeit "no European prosecution agency charged Assange with breaking any European law"[42].

The lack of any definitive measures from the EU that push back the extradition request is a display of "powerlessness" but also of the supremacy of strategic interests to the detriment of normative values. This is illustrated by a contrast in the EU's response between the case of Snowden and Assange. The European Parliament expressed outrage over the reported surveillance by the US as leaked by Snowden and warned of repercussions for the EU-US relations[43]. As a rational actor — one that is akin to a sovereign state in the international system —, the EU acts on its national interest and security. Apparent acquiescence in Assange's extradition zeroes in on the perceived absence of threat to its national security and more on the vitality of the transatlantic relationship. Why can't the EU apply trade sanctions or conditionalities to the US in the same way as Cambodia and the Philippines? The answer brings us back to the principle of strategic interest — the US has the upper hand in the bilateral relationship, and should the EU leverage its established indispensability to the US's economy, the consequences would hurt the EU more than the US. The IR concept of 'bandwagoning' best explains the decision of the EU to remain mum and passive despite its capacity in the face of a hegemon so that no matter the egregious war crimes and gross human rights abuses, the US enjoys impunity and continues to derail the rules-based international order.

Conclusion

The exemplary case of Julian Assange informs us that the Western concept of democracy is twisted and that protection of human rights is contingent on national interest and security.

The European Union's silence on the Assange case reinforces the neorealist assumption that states operate in a self-help system where each of them has the power to inflict harm on its neighbors. As a self-interested rational actor, the EU 'cooperates' with the hegemon to maintain the status quo, both domestically and internationally.

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Notes

[1] Julian Assange in an interview with Al Jazeera in 2010.

[2] Jeff Seldin. "New CIA Director Labels WikiLeaks 'Non-state Hostile Intelligence Service,' VOA, April 13, 2017, <https://www.voanews.com/a/cia-wikileaks-nonstate-hostile-intelligence-service/3809868.html>

[3] Robert Mahoney. "For the sake of press freedom, Julian Assange must be defended", *CPJ*, December 11, 2019, <https://cpj.org/2019/12/press-freedom-julian-assange-wikileaks-defend/>

[4] Oscar Grenfell. "Former CIA director Leon Panetta: We are prosecuting Assange to intimidate others," *World Socialist Web Site*, September 18, 2020, <https://www.wsws.org/en/articles/2020/09/18/assa-s18.html>

[5] Human Rights Watch and Amnesty International expressed concern over violation of Assange's human rights when extradited to the US.

[6] Reporters Without Borders, Committee to Protect Journalists, independent journalists and media organizations, among others, show solidarity with Assange and lambasted his indictment as travesty of justice.

[7] German Commissioner on Human Rights Barbel Kofler urged the UK to adhere to human rights in the extradition proceedings. UN Special Rapporteur on Torture Nils Melzer urged the UK to drop the extradition appeal.

[8] The Parliamentary Assembly of the Council of Europe (PACE) voted to oppose the extradition of Assange and called for his immediate release.

[9] Taken from the European Parliament, Liaison office in Washington DC website. <https://www.europarl.europa.eu/unitedstates/en/eu-us-relations>

[10] It has published more than 10 million documents and associated analysis. Taken from the WikiLeaks website: <https://wikileaks.org/What-is-WikiLeaks.html>

[11] Harald Schumann. "Jailing of Assange: An attack on press freedom", *Investigate Europe*, December 17, 2019. <https://www.investigate-europe.eu/en/2019/jailing-of-assange-an-attack-on-press-freedom/>

[12] He was charged with 50 weeks in prison for skipping bail following a European Arrest Warrant from a Swedish court for rape allegations. Although this is beyond the scope of this paper, this event needs mentioning to inform the rationale for his detention at Belmarsh Prison. <https://www.cnn.com/2021/01/06/julian-assange-wikileaks-boss-goes-from-journalist-to-confinement.html>

[13] United Nations Human Rights, Office of the High Commissioner. "UN expert says "collective persecution" of Julian Assange must end now", *OHCHR*, May 31, 2019. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24665>

[14] Harald Schumann. "Jailing of Assange: An attack on press freedom", *Investigate Europe*, December 17, 2019. <https://www.investigate-europe.eu/en/2019/jailing-of-assange-an-attack-on-press-freedom/>

[15] Holly Cullen. "Julian Assange's extradition case is finally heading to court – here's what to expect",

The Conversation, February 24, 2020.
<https://theconversation.com/julian-assanges-extradition-case-is-finally-heading-to-court-heres-what-to-expect-132089>

[16] US Department of Justice file. <https://www.justice.gov/opa/press-release/file/1165556/download>

[17] Article 3: Prohibition of torture

[18] Article 5: Right to liberty and security

[19] Article 6: Right to a fair trial

[20] Article 7: No punishment without law

[21] Article 10: Freedom of expression

[22] Amnesty International. "US/UK: "Travesty of justice" as extradition appeal fails to recognise that it would be unsafe for Julian Assange to be sent to the US", *Amnesty International*, December 10, 2021.
<https://www.amnesty.org/en/latest/news/2021/12/us-uk-travesty-of-justice-as-extradition-appeal-fails-to-recognise-that-it-would-be-unsafe-for-julian-assange-to-be-sent-to-the-us/>

[23] See this: <https://wikileaks.org/What-is-WikiLeaks.html>

[24] Holly Cullen. "Julian Assange's extradition case is finally heading to court – here's what to expect", *The Conversation*, February 24, 2020.
<https://theconversation.com/julian-assanges-extradition-case-is-finally-heading-to-court-heres-what-to-expect-132089>

[25] Azeezah Kanji. "Assange and the assurances of 'civilized' torturers", *Al Jazeera*, November 30, 2021. <https://www.aljazeera.com/opinions/2021/11/30/assange-and-the-assurances-of-civilised-torturers>

[26] Nadelmann (1990) as cited in Sikkink (1998) equated the desire to convert others to an advocacy to moral proselytizing. This involves promoting norms that govern the way states treat individuals or how individuals treat each other.

[27] Cristina Churruza Muguruza, "Human Rights and Democracy at the heart of the EU's foreign

policy?" in *EU Human Rights and Democratization Policies: Achievements and Challenges*, ed. Felipe Gomez Isa et al. (New York, NY: Routledge, 2018), 49-71.

[28] Jennifer Sterling-Folker, "Neoliberalism" in *International Relations Theory. Discipline and Diversity 3rd Edition*, ed. Tim Dunne et al. (Oxford, UK: Oxford University Press, 2013), 114-131.

[29] United Nations Human Rights Office of the High Commissioner. *The European Union: Human Rights and the Fight Against Discrimination*.
<https://www.ohchr.org/Documents/Publications/GuideMinorities14en.pdf>

[30] Samantha Velluti, "The Promotion and Integration of Human Rights in EU External Trade Relations." *Utrecht Journal of International and European Law* 32, no. 83 (2016): 41-68.

[31] Yumiko Nakanishi, "Mechanisms to Protect Human Rights in the EU's External Relations." in *Contemporary Issues in Human Rights Law*, ed. Yumiko Nakanishi (Singapore: Springer Singapore,

2018), 3-21.

[32] The European Commission defines EU sanctions as “a foreign policy tool which helps to achieve key EU objectives such as preserving peace, strengthening international security, and consolidating and supporting democracy, international law and human rights.”
https://ec.europa.eu/commission/presscorner/detail/pt/ip_20_2419

[33] European Parliament, “Trade regimes applicable to developing countries.”
<https://www.europarl.europa.eu/factsheets/en/sheet/162/trade-regimes-applicable-to-developing-countries>

[34] See this:
<https://www.europarl.europa.eu/factsheets/en/sheet/174/transatlantic-relations-the-usa-and-canada>

[35] See this:
<https://www.europarl.europa.eu/factsheets/en/sheet/174/transatlantic-relations-the-usa-and-canada>

[36] Ibid.

[37] See this: <https://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states/>

[38] Ibid.

[39] See this: <https://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states/>

[40] Press Association. “Julian Assange expresses surprise over EU Wikileaks decision”, *The Guardian*, November 27, 2012.
<https://www.theguardian.com/media/2012/nov/27/julian-assange-eu-wikileaks-decision>

[41] The Left in the European Parliament
<https://left.eu/meps-urge-commission-to-halt-assange-extradition-to-us/>

[42] Dick Roche. “The perturbing silence surrounding the case of Julian Assange”, *Euractiv*, November 8, 2021.
<https://www.euractiv.com/section/digital/opinion/the-perturbing-silence-surrounding-the-case-of-julian-assange/>

[43] Thierry Balzacq and Benjamin Puybureau, “The economy of secrecy: security, information control, and EU-US relations.” *West European Politics* 41, no. 4 (2018): 890-913.

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