

UN Rapporteur on Torture Nils Melzer replies to feminist legal critics on Assange

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UN Rapporteur on Torture Nils Melzer has issued an open letter, refuting accusations that his defence of Julian Assange against state-orchestrated rape allegations has cast “serious doubt as to his ability and willingness to deal with gender-based crimes.”

A group of feminist academics and human rights experts published an open letter against Melzer on July 1.

Framed as a response to his June 26 opinion piece, “Demasking the Torture of Julian Assange,” the open letter was a barely concealed threat made against Melzer’s job as UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. It was addressed to the UN high commissioner for human rights, its deputy high commissioner and the Coordination Committee of UN Special Procedures.

The open letter’s signatories described themselves as “practitioners and scholars in international law and human rights” who are “deeply disturbed by the way [Melzer] approaches the allegations of sexual assault” in the Swedish case against Assange.

“We consider Mr. Melzer’s intervention as it concerns the issue of sexual violence to be both legally erroneous and harmful to the development and protection of human rights law.”

Replying to his critics on July 2, Melzer dealt point by point with their legal and political arguments.

He refuted their claim, based on a misleading and decontextualised citation, that he had belittled or denied the role of consent in the legal definition of rape, saying that “nothing in my article intends to question this.” Rather, “My article discusses the deliberate misuse of the term ‘rape’ by the Swedish prosecution in the case of Assange, against the stated intent and account of both women involved.”

Melzer cited the words of SW and AA to demonstrate that their sexual relations with Assange in 2010 were consensual.

“[A]s far as SW is concerned, her police report states that, after Assange woke her up trying to initiate intercourse, the two had a conversation in which she asked Assange whether he was wearing a condom and he replied he was not. She

then said he ‘would better not have HIV’ and he replied that he did not, after which, she ‘let him continue’ (*lät honom fortsätta*) to have unprotected intercourse. There are no indications of coercive or incapacitating circumstances suggesting lack of consent.”

In the case of AA, “In a Twitter-message of 22 April 2013, AA herself publicly denied having been raped (*jag har inte blivit våldtagen*).” While AA’s claim that Assange deliberately tore the tip off his condom could, “if proven true,” amount to sexual assault other than rape, “the fact that she submitted as evidence a condom, supposedly worn and torn during intercourse with Assange, which carried no DNA of either Assange or AA, seriously undermines her credibility.”

Citing SW’s contemporaneous text messages that she “did not want to put any charges on Julian Assange,” but that “the police were keen on getting their hands on him,” Melzer points to high-level state intervention in the case.

“Once Chief Prosecutor Finné had intervened and closed the case, it reportedly was again the police (not SW) who ‘revised’ her statement lodged in the police system to better fit the crime of ‘rape’ before it was resubmitted by a third Social Democrat politician to a different prosecutor who was prepared to re-open the case.”

“In conclusion” Melzer writes, “I fully agree with your interpretation of the law, and that any victim courageous enough to report sexual abuse must be protected, supported and taken seriously. As far as the case of Assange is concerned, however, I stand by my conclusion that the available evidence does not warrant the prosecution’s finding of ‘rape’.”

The accusations made against Melzer could have no other meaning than to argue for his removal as special rapporteur. Melzer, the UN is told, “grossly misunderstands the realities and legalities of sexual assault” and his “written and oral comments demonstrate not only insensitivity to victims of sexual assault, but also a profound lack of understanding that does a disservice to the mandate he represents.” Furthermore, “Mr. Melzer chose to attack the veracity of the

complainants and to mock the concept of informed consent. This is a serious problem as rape is a recognized form of torture and cases of gender-based violence can and do fall within his mandate.”

An attack on Melzer was only a matter of time. His exposure of the smears and propaganda used by powerful states to isolate Assange comes right at the point where US extradition proceedings and charges under the Espionage Act have made clear to millions that he is being targeted for exposing war crimes.

That the attack has come from the proponents of gender-based identity politics is not accidental. Gender politics has played a central role in the persecution of Assange. Its advocates are now pushing for Melzer’s removal as UN special rapporteur because he dared to defy their insistence that Assange must be treated as a rapist because all “victims” must be believed.

In his reply to accusations that he had “mocked” Assange’s complainants, Melzer wrote, “Please let me assure you that, in two decades of work with victims of war and violence, sometimes under very difficult and dangerous circumstances, I have seen and suffered too much myself to be intellectually or emotionally capable of ‘mocking’ potential victims. The countless testimonies I have collected in prisons, camps and villages throughout the world have marked me deeply, and some of them keep haunting me to this day. Whatever misunderstandings may have resulted from my article, they certainly do not warrant accusing me of ‘insensitivity to victims’ or even a ‘profound lack of understanding that does a disservice to the mandate.’”

The only insensitivity has been demonstrated by the open letter’s authors. According to their warped worldview, “Allegations against powerful or high-profile men such as Julian Assange are routinely dismissed as attention-seeking or part of a conspiracy to bring them down.” This of a man languishing in Belmarsh Prison and facing extradition to an American gulag!

Melzer’s reply deserves to be quoted in full: “Assange is not a powerful man shielded by impunity, but an isolated and frail political prisoner persecuted for exposing war crimes and corruption. So, while we all work to safeguard the rights of victims of sexual abuse, let us not blindly dismiss well-founded doubts as to the veracity and/or appropriateness of rape allegations, where there are indications of duress or documented third party interests influencing the process. This holds particularly true in a highly politicized case which, in all involved jurisdictions, is plagued with a pervasive mix of grave and persistent due process violations, concerted public mobbing, humiliation and intimidation, and counterfactual accusations of hacking, spying and even causing death and injury.”

Melzer’s defence of Assange has cut across powerful vested interests—in this case the pro-imperialist upper-middle-class advocates of gender politics, fixated on career advancement, personal wealth and power.

The moving force behind the July 1 open letter is ATLAS Women, which describes itself as an “active global community of female-identifying lawyers, activists, and jurists with expertise in various facets of public international law.” Its goal is to “combat an entrenched old boys’ network which provided more opportunities to men at all levels, while under-valuing female contributions.”

“Male-centred structures,” they explain, “undermine women’s confidence to demand proper acknowledgement and remuneration for their contribution, limit their ability and willingness to remain in the profession, and exact high personal costs.” As such, the group is working “to rebuild the cultural architecture of our professional spaces to better accommodate and support female ambition and success.”

Such selfish ambition is incompatible with the defence of democratic rights.

In one of the most striking passages in their open letter, the ATLAS Women declared they were “leaving aside” whether Melzer’s statements on Assange were “an accurate summary of the events of the case.”

This statement is the legal equivalent of a “state of exception” in which Assange’s democratic rights are arbitrarily suspended. Freed from the constraints of truth and accuracy, the letter writers can simply ignore the many uncomfortable facts raised by Melzer’s original article while shifting the attack back onto Melzer—all under the guise of upholding “a gender perspective and a victim-centred approach.” ATLAS Women have failed to answer Melzer’s letter, limiting themselves to a tweet suggesting that their original false criticisms had merit: “Very glad to see SR #NilesMelzer’s response to the open letter signed by over 200 @atlas_women & allies in which he recognises rape as a crime defined by lack of consent and, importantly, that consent can be conditional.”



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