

# The Permanent 'War on Terror'

Over the past dozen years, the “war on terror” has taken a profound toll on U.S. constitutional protections and democratic principles, a process that continues despite President Obama’s promise last May that “this war like all wars must end,” as Lawrence Davidson explains.

By Lawrence Davidson

In January 2012, former war correspondent Christopher Hedges and others, including Noam Chomsky and Daniel Ellsberg, filed a lawsuit in federal court challenging the constitutionality of the 2012 National Defense Authorization Act (NDAA) and specifically the Act’s Section 1021(b)(2), which allows for indefinite detention by the U.S. military of people “who are part of or substantially support Al Qaeda, the Taliban or associated forces engaged in hostilities against the United States.”

This detention denies those held of the ability to “contest the allegations against them because they have no right to be notified of the specific charges against them,” according to the complaint. The particular issue in question was the vagueness of the terms “substantially support” and “associated forces.”

For instance, could this vagueness lead to apprehension and detention of journalists who publish interviews with members of Al Qaeda or the Taliban? Could it lead to the same treatment against political activists protesting U.S. policies against these or “associated” groups?

The case, now designated *Hedges v. Obama*, was initially heard in New York District Court by Judge Katherine Forrest. The plaintiffs claimed that the NDAA violated various constitutional amendments: the First (free speech), Fifth (due process as well as the stipulation that people must be able to understand what actions break the law) and Fourteenth (equal protection).

To address the question Judge Forrest asked the government lawyers if they could assure the court that the activities of the plaintiffs would not result in indefinite detention under the act. If they could give such assurances it would, as far as the judge was concerned, eliminate the plaintiff’s “standing” to challenge the law.

The government lawyers refused to give those assurances, and as a result, the judge concluded, “The definitions of ‘substantially supported’ and ‘associated forces’ were so vague that a reporter or activist could not be sure they would not be covered under the provision.” This, in turn, would result in what the

plaintiffs considered a “chilling effect on free speech and freedom of the press.” Therefore, in September 2012, the judge granted a permanent injunction against the practice of indefinite detention as put forth in NDAA.

There is no evidence that the U.S. government ever complied with this injunction, and its lawyers immediately appealed the ruling to the U.S. Second Circuit Court of Appeals. When the case was heard in this court, the U.S. Justice Department suddenly came up with the assurances it refused to give only weeks before.

In part it was because of these assurances that the appeals court decided to overturn Forrest’s ruling and grant a permanent stay of her injunction. In one of its interim rulings, the appeals court observed, “Since the U.S. government has promised that citizens, journalists, and activists were not in danger of being detained as a result of NDAA, it was unnecessary to block the enforcement of 102 (b)(2) of the NDAA.”

However, as Carl Mayer, the lawyer for Christopher Hedges, had noted earlier, “The government has not put in any evidence. They just keep making these broad assurances. It’s all a ‘trust us’ proceeding.” And trust them is exactly what the appellate judges did. The appeals court’s final ruling in favor of the government was given on July 17, 2013.

### ***Holder v. Humanitarian Law Project***

One can seriously ask, is any government that trustworthy? Particularly those governments that see themselves at endless war with shadowy enemies and which claim the need for “broad executive war powers” to wage the struggle.

One of the reasons that the rule of law is so important is just because there must be limits to behavior for everyone, including the rule makers. Usually the rules that hold governments in check are set forth in constitutions. Laws formulated by branches of U.S. government should explicitly comply with the U.S. Constitution, not just promise to do so.

Despite the naive faith of the Second Circuit judges in the verbal assurances of government lawyers that the NDAA will be enforced in a constitutional manner, there is evidence that such assurances cannot be trusted. Government personnel seem not to have enough objectivity and simple common sense for trust to be placed in them. For example, consider the 2010 case of Holder v. Humanitarian Law Project.

This case was argued before the Supreme Court in January 2010 and challenged that part of the USA Patriot Act, which prohibits “material support” to groups designated terrorist organizations by the U.S. government. Just as

“substantially support” and “associated forces” are too vague for Hedges and his fellow plaintiffs, so was “material support” too vague for the Humanitarian Law Project.

The HLP was seeking to interact with alleged terrorist groups such as the Kurdistan Workers Party of Turkey so as to “help the group enter into peace negotiations and United Nations processes.” In other words, the HLP wanted to help lead such organizations away from violence and toward nonviolent strategies. Could this be construed as giving “material support” to terrorists?

The Obama Justice Department, in striking disregard of common sense, argued that it was indeed material support and thus a criminal venture. And, as it turned out, in its June 2010 decision, the Supreme Court agreed.

This was not just an intellectual exercise in front of the highest court of the land. The resulting Supreme Court decision quickly assumed real-life significance. Within three months of its decision, the FBI was raiding homes in Chicago and Minneapolis, confiscating computers and files, because they suspected some undefined connection between the residents and various alleged Colombian and Palestinian terrorist groups. The FBI cited *Holder v. Humanitarian Law Project* as legal justification for their actions.

In addition, enforcement of this law turned out to be blatantly selective. In January 2011, civil rights lawyer David Cole, who represented the HLP before the Supreme Court, noted that well-known political figures, such as former New York City Mayor Rudolph Giuliani and former head of homeland security Tom Ridge, had committed felonies when they publicly spoke in support of the Mujahedeen Khalq, an Iranian designated terrorist group that happened also to be in opposition to the current Islamic government of Iran. The FBI has not raided their homes nor will it.

Under these circumstances, anyone who accepts at face value the assurance of government lawyers that laws such as the Patriot Act and NDAA will conform to the Constitution and not walk all over one’s civil rights should, as the old saying goes, have their head examined.

What we have in the *Hedges v. Obama* case is yet another very bad precedent. As Judge Forrest had pointed out, “Courts must safeguard core constitutional rights.” The Second Circuit Court of Appeals, clearly not applying the principle of caveat emptor (let the buyer beware) to this situation, has sold out that obligation for a handful of dubious promises.

Recent history provides no confidence that such promises are given in good faith. No, it is bad faith we are witnessing here. The government lawyers should

hang their heads in shame for obviously undermining the Constitution they are sworn to uphold. It just goes to show there are always those, be they soldiers, police, or lawyers who will simply follow orders no matter what the consequences.

Toward the end of this whole unseemly process someone pointed out that President Obama has consistently asserted that he is against the indefinite detention of U.S. citizens even though his Justice Department has always supported keeping the detention clause of NDAA in place and operative.

Maybe the President is simply playing a double game and lying to the voters. Lying is certainly part of the politician's toolbox. On the other hand, maybe Obama is conflicted but dwells in an environment where it is politically "necessary" to be seen as a tough guy, lest the Republican warmongers gain an edge. How much difference does it really make?

As it stands now, in terms of civil liberties there is not much "daylight" between Obama's practice and the past behavior of neoconservative vulgarians such as George W. Bush.

**Lawrence Davidson is a history professor at West Chester University in Pennsylvania. He is the author of Foreign Policy Inc.: Privatizing America's National Interest; America's Palestine: Popular and Official Perceptions from Balfour to Israeli Statehood; and Islamic Fundamentalism.**

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## America's Upside-Down Morality

**Exclusive:** Pvt. Bradley Manning has prostrated himself before his court-martial judge, apologizing for leaking documents on U.S. government wrongdoing and referencing his psychological problems as reasons for mercy. The sad spectacle underscores how upside-down American morality now is, says Robert Parry.

By Robert Parry

Having covered the U.S. government for nearly 36 years, I am not so naive as to expect perfection or even anything close. But there are times when the immoral dimensions of Official Washington stand out in the starkest shades, not in variations of gray but in black and white.

Such was the gut-wrenching moment on Wednesday when Pvt. Bradley Manning, who exposed U.S. government war crimes and other wrongdoing, made a groveling

apology for doing the right thing when there has been next to no accountability for the officials and their media collaborators who did innumerable wrong things.

While no one in power seems to expect even an apology from let alone punishment of former President George W. Bush, Vice President Dick Cheney and their subordinates who facilitated acts of torture and who deceived the American people into an unprovoked invasion of Iraq, 25-year-old Bradley Manning finds himself having to beg for mercy to avoid what could be a 90-year prison sentence.

At his court-martial sentencing hearing, Manning's attorneys presented the brave whistleblower as a psychologically confused young man who mistakenly thought he was doing something good when he was really doing something bad. They even released a photo of him dressed as a woman, setting the stage for Manning's apology.

"I'm sorry that my actions hurt people," Manning told the court martial judge. "I'm sorry that they hurt the United States. At the time of my decision, as you know, I was dealing with a lot of issues, issues that are ongoing and continue to affect me."

But there has been no serious evidence that Manning's disclosure of hundreds of thousands of classified U.S. government records "hurt people" and they only "hurt the United States" in the sense that many of Official Washington's misdeeds and manipulations were exposed for the world to see. Some of Manning's critics say U.S. diplomats now won't be so forthcoming in describing these realities out of fear that some future Manning might do more leaking, but there's no evidence of that either.

In contrast to the lack of evidence regarding harm, there were undeniable benefits to democracy and human rights from what Manning did reveal. Manning's documents provided the detailed "ground truth" that has enabled Americans to better understand what their government did in Iraq and Afghanistan and how grotesque many of those crimes were.

For instance, because Manning disclosed a classified videotape, we know that the much-heralded "successful surge" in Iraq in 2007 included the slaughter of innocent Iraqis walking down the streets of Baghdad as well as the slaying of a Good Samaritan who stopped his van, carrying his own children, in a vain attempt to help the wounded. The trigger-happy helicopter gunners killed the man and wounded his kids, too.

Manning's leaks also revealed the U.S. government's awareness of gross

corruption in “allied” countries, such as Tunisia where the revelations helped spark an uprising that drove out a longtime dictator and gave Tunisians a chance at democracy.

### **Iran’s Nuclear Program**

Another important Manning disclosure, which may have deterred another catastrophic war in the Middle East, was how the U.S. government had manipulated the election of the new director general to the International Atomic Energy Agency. U.S. Embassy cables, exposed by Manning, showed that Japanese diplomat Yukiya Amano had been installed in 2009 as something of a U.S.-Israeli puppet.

The significance of this information was that, without it, Amano’s IAEA could have advanced the goal of Israeli leaders and U.S. neoconservatives for war with Iran over its nuclear program by exaggerating the danger. That propaganda strategy was undercut by Manning’s revelation that Amano was not only installed by the U.S. government but was meeting secretly with Israeli officials, ironically with Amano raising no complaints about Israel’s own rogue nuclear arsenal.

When the cables about Amano came out a year after his appointment, Amano’s IAEA was busy feeding the hysteria over Iran’s nuclear program with reports that were trumpeted by major U.S. news outlets. IAEA’s alarm undercut Iran’s denial about building a bomb and a 2007 U.S. intelligence estimate which concluded that Iran had stopped work on a bomb in 2003.

So, I found it useful to examine the detailed documents regarding Amano’s election. What those classified State Department cables showed was that Amano credited his election largely to U.S. government support and then stuck his hand out for more U.S. money. Further, Amano left little doubt that he would side with the United States in its confrontation with Iran.

According to U.S. embassy cables from Vienna, Austria, the site of IAEA’s headquarters, American diplomats in 2009 were cheering the prospect that Amano would advance U.S. interests in ways that outgoing IAEA Director General Mohamed ElBaradei wouldn’t.

In a July 9, 2009, cable, American chargé Geoffrey Pyatt said Amano was thankful for U.S. support of his election. “Amano attributed his election to support from the U.S., Australia and France, and cited U.S. intervention with Argentina as particularly decisive,” the cable said.

The appreciative Amano informed Pyatt that as IAEA director general, he would take a different “approach on Iran from that of ElBaradei” and he “saw his primary role as implementing safeguards and UNSC [United Nations Security

Council]/Board resolutions,” i.e. U.S.-driven sanctions and demands against Iran.

Amano also discussed how to restructure the senior ranks of the IAEA, including elimination of one top official and the retention of another. “We wholly agree with Amano’s assessment of these two advisors and see these decisions as positive first signs,” Pyatt commented.

### **A Hand-Out**

In return, Pyatt made clear that Amano could expect strong U.S. financial support, stating that “the United States would do everything possible to support his successful tenure as Director General and, to that end, anticipated that continued U.S. voluntary contributions to the IAEA would be forthcoming. Amano offered that a ‘reasonable increase’ in the regular budget would be helpful.”

Pyatt learned, too, that Amano had consulted with Israeli Ambassador Israel Michaeli “immediately after his appointment” and that Michaeli “was fully confident of the priority Amano accords verification issues.” Michaeli added that he discounted some of Amano’s public remarks about there being “no evidence of Iran pursuing a nuclear weapons capability” as just words that Amano felt he had to say “to persuade those who did not support him about his ‘impartiality.’”

In private, Amano agreed to “consultations” with the head of the Israeli Atomic Energy Commission, Pyatt reported. (It is ironic indeed that Amano would have secret contacts with Israeli officials about Iran’s alleged nuclear weapons program, which has yet to yield a single bomb, when Israel possesses a large and undeclared nuclear arsenal.)

In a subsequent cable dated Oct. 16, 2009, the U.S. mission in Vienna said Amano “took pains to emphasize his support for U.S. strategic objectives for the Agency. Amano reminded ambassador [Glyn Davies] on several occasions that he was solidly in the U.S. court on every key strategic decision, from high-level personnel appointments to the handling of Iran’s alleged nuclear weapons program.

“More candidly, Amano noted the importance of maintaining a certain ‘constructive ambiguity’ about his plans, at least until he took over for DG ElBaradei in December” 2009.

In other words, Amano was a bureaucrat eager to bend in directions favored by the United States and Israel, especially regarding Iran’s nuclear program. Amano’s behavior surely contrasts with how the more independent-minded ElBaradei resisted some of Bush’s key claims about Iraq’s supposed nuclear weapons program, correctly denouncing some documents as forgeries.

The Amano cables, which Manning supplied to WikiLeaks, were first spotlighted by the U.K. Guardian in 2010. However, because the full cables were posted on the Internet, I was later able to dig through them to find additional details, such as Amano asking for more U.S. money.

Without this level of “ground truth,” Americans would be at the mercy of the major U.S. news media, which seemed as much on board for a war with Iran as it was for war with Iraq. The major U.S. news outlets have ignored the cables about Amano and continue to present him and his IAEA as honest brokers regarding Iran’s nuclear program. But millions of Americans know better because of Pvt. Manning’s selfless disclosures.

Thus, the depth of gratitude for Manning’s actions should run deep. Indeed, it is hard to calculate how many lives his disclosures may have saved and how many mistakes he has helped the United States avoid. In a moral society, he would be hailed as a national hero, rather than face prosecution and be forced to humiliate himself in a desperate bid to avoid spending the rest of his life in prison.

This injustice becomes even starker when you watch the choreographers of George W. Bush’s torture policies and the architects of his Iraq War go free. Or when you see the key “journalists” who facilitated the Bush-Cheney crimes remain in high-paying and high-profile jobs.

After taking office, President Barack Obama let these war criminals and their accomplices evade accountability with his infamous dictum about “looking forward, not backward.” Yet, the ultimate hypocrisy in the case of Bradley Manning is that Obama’s leniency only seems to apply to the war criminals, not to the truth-tellers who expose the war criminals.

**Investigative reporter Robert Parry broke many of the Iran-Contra stories for The Associated Press and Newsweek in the 1980s. You can buy his new book, *America’s Stolen Narrative*, either in print here or as an e-book (from Amazon and barnesandnoble.com). For a limited time, you also can order Robert Parry’s trilogy on the Bush Family and its connections to various right-wing operatives for only \$34. The trilogy includes *America’s Stolen Narrative*. For details on this offer, click here.**

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## A Method to Egypt’s Madness

The bloody assault on Egyptians protesting the ouster of democratically elected

President Mohamed Morsi has the look of madness as the military pushes Islamists toward more violence but there is a sick logic if the generals see more Islamic extremism as their lock on U.S. aid, writes ex-CIA analyst Paul R. Pillar.

By Paul R. Pillar

There were other ways of dealing with the camping-out protestors in Cairo. The Ministry of Interior had even talked about other ways, about some combination of tear gas and leaving open an exit route so the protestors could disperse. And surely it must have occurred to the Egyptian generals that the action they in the end took, just like the event in Tiananmen Square in 1989 that this week's event so readily evokes, would leave a lasting bloodstain on their legacy.

The casualty total of what happened in Cairo on Wednesday is uncertain, just as the toll of what happened in Tiananmen Square still is, but it is possible the numbers are of similar orders of magnitude.

There are many plot lines and accompanying explanations that can be applied to the current mess in Egypt, but one does not have to be a Middle Eastern conspiracy aficionado to look in particular at how the Egyptian generals and their shades-of-Nasser leader, Abdul-Fattah el-Sisi, may be doing what they are doing as a way of staying within the embrace of the West and especially the United States.

One of the most prominent things they have been doing over the past couple of months is to motivate Egyptians and especially Islamists to turn to extremism and violence. First there was the slamming of the door in the face of the Muslim Brotherhood, incarcerating its leaders and making it very clear the Brotherhood would not be welcome to participate in any new and purportedly democratic political process.

Most of the Brotherhood's supporters were not ready to abandon the peaceful ways that the organization had followed for decades, but their dismay and anger made the protests and the camps inevitable. Now there is the bloody and brutal destruction of the camps, and at least some of those supporters are surely concluding that there is no method left to them but violence.

Wouldn't the breeding of more Egyptian terrorists be a bad thing from the viewpoint of Egyptian military leaders? Not if they wish to present themselves as a bastion against terrorism and to lay claim as such to American support. The brass may be more comfortable with this sort of claim than with one based on shepherding the introduction of true democracy, given all the uncertainties democracy is apt to pose for the highly privileged position of the Egyptian military and its officer corps.

The cultivation of more extremists and terrorists may be necessary to sustain any claim based on an Egyptian Islamist bogeyman. Mohamed Morsi's presidency certainly was not sufficient; it did not come close to realizing the old Islamophobic scenario of one man, one vote, one time.

One of the most distinctive aspects of Morsi's one year in office was how he was *not* able to take control of the organs of state even though he supposedly was the chief executive. He came nowhere close to taking control of the all-important security forces. One of the bevy of army and police generals who have just been installed as provincial governors had earlier, when Morsi was still president, been demonstrably open about his intention not to take any action when a mob was ransacking offices of the Muslim Brotherhood.

The technique of following policies that cultivate more extremists and terrorists and then laying claim to a special relationship with Washington as a bastion against extremism and terrorism is not one that the Egyptian generals necessarily thought up themselves. They could have learned it from the masters of the technique next door in Israel. They are even collaborating with Israel in practicing the technique, as punctuated the other day by an Israeli drone strike, evidently condoned by Cairo, against oppositionists in the Sinai.

If the Egyptian generals have not seemed very worried about jeopardizing their \$1.5 billion in annual U.S. aid, maybe it is because they see how Israel gets twice that much, not to mention all those vetoes at the United Nations and other political cover, despite the Israelis repeatedly sticking their thumbs in American eyes. The latest thumb-sticking has been this week, with an announcement of more expansion of settlements in occupied territory just as Israeli-Palestinian peace talks are getting under way.

Secretary of State John Kerry reassures us that this was not a surprise because Prime Minister Netanyahu had been "upfront" with him about the latest settlement expansion. Evidently even thumb-sticking is acceptable if those doing it are brazenly "upfront" about it. General el-Sisi looks like he has this kind of swagger.

**Paul R. Pillar, in his 28 years at the Central Intelligence Agency, rose to be one of the agency's top analysts. He is now a visiting professor at Georgetown University for security studies. (This article first appeared as a [blog post at The National Interest's Web site](#). Reprinted with author's permission.)**

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