

THE WAR ON TERROR UNDER INVESTIGATION -
EUROPE'S ATTEMPTS TO BALANCE HUMAN RIGHTS, SOVEREIGNTY, AND
SECURITY

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Has the Bush Administration's Response to 9/11 Resulted in Legal and Political Turmoil in Europe?

If yes, is this a good or a bad thing?

Content

- The Bush Administration's Legal Response to 9/11
- European Institutions' Investigations into Alleged CIA Activities
- EU Member States' Investigations
- Current Debate

USA-Legal Wrangling

- Bush Administration's reaction to 9/11
 - Existing international and national legal structures insufficient to deal with this new security threat
 - Bush, as Commander in Chief, reframed rule of law allowing for GST Program

US Constitution, Article 2

“The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States;”

“The President enjoys complete discretion in the exercise of his Commander-in-Chief authority and in conducting operations against hostile forces...In light of the President’s complete authority over the conduct of war...we will not read a criminal statute as infringing on the President’s ultimate authority in these areas.”

“One of the core functions of the Commander in Chief is that of capturing, detaining, and interrogating members of the enemy.”

“Any effort by Congress to regulate interrogation of battlefield combatants would violate the Constitution’s sole vesting of the Commander-in-Chief authority in the President”

Memorandum for Alberto R. Gonzales Council to the President, “*Re: Standards of Conduct for Interrogation under 18 U.S.C. 2340-2340A*” August 1, 2002.

GST Program (extraordinary rendition)

- Authorizes the CIA to:
 - Capture suspects with the help of foreign internal security services
 - Hold them captive abroad (“black sites”)
 - Employ certain interrogation techniques (some of which are very widely regarded as possibly violating the International Treaty Prohibiting Torture)
 - Maintain planes to fly prisoners between countries

European Institutions

- Council of Europe
 - Secretary General Investigation
 - Committee on Legal Affairs and Human Rights
- European Parliament
 - Temporary Committee to Investigate the Alleged Illegal Transfer of Detainees (TDIP)

Response of Member States – Two Examples

- Germany (Parliamentary Investigation)
- Italy (Prosecutorial Investigation)

Europe's Current Debate

The legal dimension

- Is current legislation adequate?
- Differences between the two reports
- Renditions to be replaced by means of mutual legal assistance or extradition?
- What to do with information obtained from extra-judicial detainees after alleged torture?
- Warrants of arrests against members of security agencies?

Europe's Current Debate

The political dimension

- The European Parliament vs. The European Council
- Old Europe vs. New Europe—the issue of integration and loyalty to Brussels
- EU vs. NATO—the issue of nation-building and out-of-area missions
- Bureaucracy and transparency
- Cooperation and hypocrisy
- Multilateralism

Europe's Current Debate

The political dimension inside EU Member States

- Parliament vs. Executive
 - Parliamentary oversight and international counterterrorism cooperation
- Judiciary vs. Executive
 - Introducing classified information into court procedure?
- Media vs. All
 - Transparency and education vs. sensationalism and escalation
- ... and The European Citizen?

Germany

- April, 2006 Launch of Parliamentary Investigation by opposition parties
 - 3 topics of investigation
 - Renditions
 - Black Sites
 - Three individual cases (el-Masri, Zammar, Kurnaz)
- June 2005 Public Prosecutors office in Munich of el-Masri (lower profile)
- A tool of the current opposition (some part of the Schroder government) asking for transparency. Former and current government refusing to do that in light of ongoing relationship with the US.
 - Green's are pushing for investigation, where their own party was likely involved.

Italy

- Executive obstruction of extradition requests
- Inquiry into Italian intelligence officers and CIA agents.
- Name the Abu Omar, was taken from the streets
 - Facts: Avian, Ramstien,
 - Extraordinary charging of government officials of violation of Italian law.
 - Daria Pesce, the lawyer, told a court in Milan that her client, Robert Lady, felt the issue should be resolved politically, not in a courtroom.
 - The Milan court opened a hearing into whether to indict 26 Americans — including Lady — and five Italian secret service officials on a charge of kidnapping the Egyptian cleric Hassan Mustafa Osama Nasr, known as Abu Omar, in Milan in 2003.
 - The hearing lasted about three hours and ended without a decision. The next hearing was scheduled for Jan. 29.
 - Armando Spataro, the prosecutor who has led the investigation, requested the indictments last month. The case highlights the CIA's rendition program in which terror suspects are transferred to third countries, where critics say they frequently face torture.
 - Instead, she said, statements that amounted to confessions from two Italians made it impossible for her to seek diplomatic immunity for her client.
 - "No one expected the secret services to talk," she told The Associated Press in an interview in her offices.
 - She was referring to statements by several Italians cooperating with Milan prosecutors that described Lady's alleged involvement with the Feb. 17, 2003, abduction of Egyptian Osama Moustafa Hassan Nasr, also known as Abu Omar, from a Milan street.
 - Pollari's lawyers said Tuesday they intended in the next session to try to add Prime Minister Romano Prodi, former Prime Minister Silvio Berlusconi and their respective defense ministers to the list of witnesses who must take the stand.