

‘The US does not condone...’

*Condoleezza Rice
Andrew Tyrie MP*

On 5 December 2005, before visiting Europe, United States Secretary of State Condoleezza Rice tried to rebutt persistent complaints that the US transported detainees to countries practising torture, and that some of these ‘extraordinary renditions’ took place via Europe. We reprint Ms Rice’s statement in full. We also feature a commentary on this statement by Andrew Tyrie MP.

‘We have received inquiries from the European Union, the Council of Europe, and from several individual countries about media reports concerning US conduct in the war on terror. I am going to respond now to those inquiries, as I depart today for Europe. And this will also essentially form the text of the letter that I will send to Secretary Straw, who wrote on behalf of the European Union as the European Union President.

The United States and many other countries are waging a war against terrorism. For our country this war often takes the form of conventional military operations in places like Afghanistan and Iraq. Sometimes this is a political struggle, a war of ideas. It is a struggle waged also by our law enforcement agencies. Often we engage the enemy through the cooperation of our intelligence services with their foreign counterparts.

We must track down terrorists who seek refuge in areas where governments cannot take effective action, including where the terrorists cannot in practice be reached by the ordinary processes of law. In such places terrorists have planned the killings of thousands of innocents – in New York City or Nairobi, in Bali or London, in Madrid or Beslan, in Casablanca or Istanbul. Just two weeks ago I also visited a hotel ballroom in Amman, viewing the silent, shattered aftermath of one of those attacks.

The United States, and those countries that share the commitment to defend their citizens, will use every lawful weapon to defeat these terrorists. Protecting citizens is the first and oldest duty of any government. Sometimes these efforts are misunderstood. I want to help all of you understand the hard choices involved, and some of the responsibilities that go with them.

One of the difficult issues in this new kind of conflict is what to do with captured individuals who we know or believe to be terrorists. The individuals come from many countries and are

often captured far from their original homes. Among them are those who are effectively stateless, owing allegiance only to the extremist cause of transnational terrorism. Many are extremely dangerous. And some have information that may save lives, perhaps even thousands of lives.

The captured terrorists of the 21st century do not fit easily into traditional systems of criminal or military justice, which were designed for different needs. We have to adapt. Other governments are now also facing this challenge.

We consider the captured members of al Qaeda and its affiliates to be unlawful combatants who may be held, in accordance with the law of war, to keep them from killing innocents. We must treat them in accordance with our laws, which reflect the values of the American people. We must question them to gather potentially significant, life-saving, intelligence. We must bring terrorists to justice wherever possible.

For decades, the United States and other countries have used 'renditions' to transport terrorist suspects from the country where they were captured to their home country or to other countries where they can be questioned, held, or brought to justice.

In some situations a terrorist suspect can be extradited according to traditional judicial procedures. But there have long been many other cases where, for some reason, the local government cannot detain or prosecute a suspect, and traditional extradition is not a good option. In those cases the local government can make the sovereign choice to cooperate in a rendition. Such renditions are permissible under international law and are consistent with the responsibilities of those governments to protect their citizens.

Rendition is a vital tool in combating transnational terrorism. Its use is not unique to the United States, or to the current administration. Last year, then Director of Central Intelligence George Tenet recalled that our earlier counterterrorism successes included 'the rendition of many dozens of terrorists prior to September 11, 2001.'

- Ramzi Youssef masterminded the 1993 bombing of the World Trade Centre and plotted to blow up airlines over the Pacific Ocean, killing a Japanese airline passenger in a test of one of his bombs. Once tracked down, a rendition brought him to the United States, where he now serves a life sentence.
- One of history's most infamous terrorists, best known as 'Carlos the Jackal,' had participated in murders in Europe and the Middle East. He was finally captured in Sudan in 1994. A rendition by the French government brought him to justice in France, where he is now imprisoned. Indeed, the European Commission of Human Rights rejected Carlos' claim that his rendition from Sudan was unlawful.

Renditions take terrorists out of action, and save lives.

In conducting such renditions, it is the policy of the United States, and I presume of any other democracies who use this procedure, to comply with its laws and comply with its treaty obligations, including those under the Convention Against Torture. Torture is a term that is defined by law. We rely on our law to govern our operations. The United States does not permit, tolerate, or condone torture under any

circumstances. Moreover, in accordance with the policy of this administration:

- The United States has respected – and will continue to respect – the sovereignty of other countries.
- The United States does not transport, and has not transported, detainees from one country to another for the purpose of interrogation using torture.
- The United States does not use the airspace or the airports of any country for the purpose of transporting a detainee to a country where he or she will be tortured.
- The United States has not transported anyone, and will not transport anyone, to a country when we believe he will be tortured. Where appropriate, the United States seeks assurances that transferred persons will not be tortured.

International law allows a state to detain enemy combatants for the duration of hostilities. Detainees may only be held for an extended period if the intelligence or other evidence against them has been carefully evaluated and supports a determination that detention is lawful. The US does not seek to hold anyone for a period beyond what is necessary to evaluate the intelligence or other evidence against them, prevent further acts of terrorism, or hold them for legal proceedings.

With respect to detainees, the United States Government complies with its Constitution, its laws, and its treaty obligations. Acts of physical or mental torture are expressly prohibited. The United States Government does not authorise or condone torture of detainees. Torture, and conspiracy to commit torture, are crimes under US law, wherever they may occur in the world.

Violations of these and other detention standards have been investigated and punished. There have been cases of unlawful treatment of detainees, such as the abuse of a detainee by an intelligence agency contractor in Afghanistan or the horrible mistreatment of some prisoners at Abu Ghraib that sickened us all and which arose under the different legal framework that applies to armed conflict in Iraq. In such cases the United States has vigorously investigated, and where appropriate, prosecuted and punished those responsible. Some individuals have already been sentenced to lengthy terms in prison; others have been demoted or reprimanded.

As CIA Director Goss recently stated, our intelligence agencies have handled the gathering of intelligence from a very small number of extremely dangerous detainees, including the individuals who planned the 9/11 attacks in the United States, the attack on the USS *Cole*, and many other murders and attempted murders. It is the policy of the United States that this questioning is to be conducted within US law and treaty obligations, without using torture. It is also US policy that authorised interrogation will be consistent with US obligations under the Convention Against Torture, which prohibit cruel, inhuman, or degrading treatment. The intelligence so gathered has stopped terrorist attacks and saved innocent lives – in Europe as well as in the United States and other countries. The United States has fully respected the sovereignty of other countries that cooperate in these matters.

Because this war on terrorism challenges traditional norms and precedents of previous conflicts, our citizens have been discussing and debating the proper legal standards that should apply. President Bush is working with the US Congress to

come up with good solutions. I want to emphasise a few key points.

- The United States is a country of laws. My colleagues and I have sworn to support and defend the Constitution of the United States. We believe in the rule of law.
- The United States Government must protect its citizens. We and our friends around the world have the responsibility to work together in finding practical ways to defend ourselves against ruthless enemies. And these terrorists are some of the most ruthless enemies we face.
- We cannot discuss information that would compromise the success of intelligence, law enforcement, and military operations. We expect that other nations share this view.

Some governments choose to cooperate with the United States in intelligence, law enforcement, or military matters. That cooperation is a two-way street. We share intelligence that has helped protect European countries from attack, helping save European lives.

It is up to those governments and their citizens to decide if they wish to work with us to prevent terrorist attacks against their own country or other countries,

Are we being misled?

“We’re operating under our laws, we’re operating under our international obligations,” is the refrain. But these cleverly crafted words do not mean what they appear to say. The US position is premised on the claim that its actions comply with US law and, since US law complies with its international obligations, these too are being complied with. The claim is flawed.

Take the definition of torture. The definitions under the 1984 torture convention and the relevant US statute are not the same. The threshold for torture is lower under international law: acts that do not amount to torture under US law may do so under international law. “Waterboarding” – strapping a detainee to a board and dunking him under water so he believes that he might drown – plainly constitutes torture under international law, even if it may not do so under US law.

How, then, does the administration justify the claim that US law trumps? When the US joined the 1984 convention it entered an “understanding” on the definition of torture, to the effect that the international definition was to be read as being consistent with the US definition. The administration relies on the “understanding”. So, when Condoleezza Rice says the US does not do torture or render people to countries that practise torture, she does not rely on the international definition. That is wrong: the convention does not allow each country to adopt its own definition, otherwise the convention’s obligations would become meaningless. That is why other governments believe the US “understanding” cannot affect US obligations under the convention. They are right.

*Philippe Sands, Financial Times,
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and decide how much sensitive information they can make public. They have a sovereign right to make that choice.

Debate in and among democracies is natural and healthy. I hope that that debate also includes a healthy regard for the responsibilities of governments to protect their citizens.

Four years after September 11, most of our populations are asking us if we are doing all that we can to protect them. I know what it is like to face an inquiry into whether everything was done that could have been done. So now, before the next attack, we should all consider the hard choices that democratic governments must face. And we can all best meet this danger if we work together.’

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Assurances from Jack Straw and Condoleezza Rice over torture flights are ‘as good as worthless’

On 13th December 2005, the All Party Parliamentary Group on Extraordinary Rendition at Westminster published a legal Opinion commissioned from leading authority James Crawford, Whewell Professor of International Law at the University of Cambridge.

The Opinion shows that the United Kingdom may not be fulfilling its legal obligations, despite Jack Straw’s protestations to the contrary.

The opinion analyses the statement made by United States Secretary of State Condoleezza Rice on 5th December in response to allegations that the United States is engaging in unlawful renditions of terror suspects. It also advises on the legal issues related to the concern that United Kingdom territory or facilities may have been used to assist the US in carrying out ‘torture flights’.

Andrew Tyrie MP, Chairman of the All Party Parliamentary Group, said:

‘Jack Straw said on the Today programme: “careful research has been unable to identify any occasion... when we have received a request for permission by the United States for a rendition through the UK territory or airspace... [the Foreign and Commonwealth Office] have found no records.”

This should reassure nobody.

On the specific issue of records, on the 13th July the Home Office told me in an answer to a Parliamentary Question (Number 442 27.6.05): “records of a transit application are not kept once the transit has been completed.” So it’s hardly surprising there are no records.’

Mr Tyrie continued:

‘It is crystal clear that the United Kingdom must investigate allegations that it has been complicit in torture. Checking for instances of the US requesting permission is simply derisory.

Two important conclusions come from Professor Crawford’s Opinion. First, to comply with its legal obligation the British government must satisfy itself that Extraordinary Rendition is not leading to torture. As Professor Crawford puts it: “the question that must be asked is whether torture is likely to take place if a person is transported, irrespective of whether or not the government claims that the answer is no, or what its hopes or beliefs may be” (para. 20).

Secondly, relying on Condoleezza Rice's assurance provides little or no legal cover for the government. Condoleezza Rice's assurance is based on the US government's interpretation of its obligations but they are as good as worthless for ensuring compliance with Britain's legal obligations. It is the duty of the UK government to take all the necessary active steps to achieve this.

In particular, as Professor Crawford clarifies, all UK assistance to US aircraft which may be engaged in Extraordinary Rendition should be conditional on the United States respecting obligations not to engage in torture, at the legal standard at which the obligations apply to the United Kingdom. In other words, if the US is to use UK airports and airspace for these practices, the United States must abide by the legal rules that bind the United Kingdom and UK courts' interpretation of them, not just US law or the US administration's interpretation of them.

We also need a thorough investigation of detailed allegations that have been made.¹

For example, the Saad Madni case raises a number of specific questions which Mr Straw needs to answer:

Did this Gulfstream 5 stop in the UK?

Was Mr Madni on board?

Did the United States seek permission for this flight to refuel?

Did the United Kingdom give permission for the flight to refuel?

Was Mr Madni likely to be tortured as a result of this transfer?'

Mr Tyrie concluded:

'Professor Crawford is not raising abstract legal or technical issues. His opinion goes to the heart of what's being done in our name. There should be no place for torture in British Foreign Policy, nor for turning a blind eye to it.

The government's position is now badly exposed. Jack Straw knows this very well. That is why he has been engaging in the same sort of legally inspired economy with the truth that we have already seen from Condoleezza Rice.

The truth will come out on all of this eventually, anyway. It would be far better for Britain's standing in the world, and for the government, if it told us now.

If many people's concerns and fears turn out to be well grounded, we will be undermining the very values that we are seeking to export and, as a result, we will make ourselves less secure not more.'

The All Party Parliamentary Group on Extraordinary Rendition is chaired by Andrew Tyrie MP. It is a cross party group and comprises over 50 MPs and Peers.

Reference

1. In the case of Saad Iqbal Madni, it was alleged that: The Gulfstream V on to which Iqbal was bundled and flown to Egypt left Cairo on January 15 [2002] and headed for Scotland. After a brief stopover at Prestwick, probably to refuel, it departed again for Washington. Iqbal was held in Cairo for two years before appearing in Guantánamo, where he told other detainees who have since been released that he was tortured by having electrodes placed on his knees. It also appears that his bladder was damaged during interrogation. See 'Destination Cairo: human rights fears over CIA flights'. Ian Cobain, Stephen Grey, Richard Norton Taylor. *The Guardian*, September 12 2005.