Europe and Extraordinary Rendition

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Tony Bunyan is the Director of Statewatch, the civil liberties and human rights organization. He is also a regular participant in the conferences of the European Network for Peace and Human Rights (see Spokesman 86*). In January 2006, he was invited to address Members of the European Parliament on the United States' use of European countries for the illegal transportation and detention of prisoners in the process known as 'extraordinary rendition' (see* Spokesman 89*). This article is based on his speech.*

What do we know? Some examples are that in Spain 42 suspected Central Intelligence Agency operatives are sought – at least 18 of whom have addresses near Langley, the CIA headquarters. Their names were traced through luxury hotels in Palma and Mallorca.

A fax intercepted by Swiss secret services from the Egyptian Foreign Ministry to their embassy in London said that 23 Iraqi and Afghan prisoners were interrogated at a Romanian military base on the Black Sea.

Alvaro Gil-Robles (Council of Europe Human Rights Commissioner) says that there is a camp at US base 'Bondsteel' outside Priština (in Kosovo) that looks like Guantánamo Bay.

One of the first cases of extraordinary rendition we know took place in Sweden on 18 December 2001. Muhammed Al Zery and Ahmed Agiza from Egypt were granted asylum in 1999 and 2000 respectively. They were arrested by Swedish Security Police and taken to Bromma airport were the executive jet N379P had landed. They were handed over to hooded CIA agents who cut the clothes from their bodies, sedated them, dressed them in overalls, chained their hands and feet, and flown to Egypt, where they were tortured.

A case study from the United Kingdom*

The first of the overall issues I want to look at is the role of European Union governments who have turned a 'blind eye' to rendition flights. I want to do this by examining the position of the United Kingdom.

On 10 February 2005, *The Independent* newspaper published a story saying that two executive jets were using British airports to carry out CIA renditions. (*The Independent on Sunday*, 20 February 2005, developed the story.)

On 25 February 2005, the House of

* Sources primarily *Hansard,* the official Parliamentary record.

Commons Select Committee on Foreign Affairs wrote to the Foreign Secretary asking whether the UK government allowed any other country 'to use its territory or its airspace [for renditions]'. On 12 September 2005, the allegations were pinned down when *The Guardian* newspaper detailed 210 CIA flights into the United Kingdom – the data had been gathered in the United States.

The Central Intelligence Agency had used 19 British airports and Royal Air Force bases including Heathrow, Gatwick, Birmingham, Luton, Bournemouth and Belfast, plus 75 flights through Prestwick in Scotland, 74 through Glasgow, and 33 through RAF Northolt (near London).

There was now substantial concern about the 210 recorded flights (later to rise to 400). There was also concern at the use of United Kingdom airspace. For example, CIA planes using Shannon airport on the west coast of Ireland (recorded 43 times) would most likely use United Kingdom airspace to or from their destinations.

In October 2005, the Foreign and Commonwealth Office issued a statement saying:

> 'The government are not aware of the use of their territory or airspace for the purposes of extraordinary rendition. The government have not received any request nor granted any permissions for the use of UK territory or airspace for such purposes'.

On 16 November 2005, the Ministry of Defence and Foreign and Commonwealth Office said it:

> 'has not authorised, nor received any requests for the use of UK airspace or airports for those involuntarily transferred'.

On 17 November 2005, in a written answer, the Ministry of Defence said it maintained records of all civil registered planes landing at UK military airfields. The record included the plane's registration number, name of the pilot, departure date and destination. It was, said the answer, not required to have the names of the passengers.

What about the use of RAF Northolt 33 times?

On 12 December 2005, the Department of Transport set out the legal position under the Chicago Convention on Civil Aviation 1944 (the UK Civil Aviation Act 1982). Under Article 9 a state may restrict or prohibit aircraft flying over its territory on a number of grounds including 'public safety', i.e. the safety and well-being of any passengers. Scheduled flights need permission, which can be denied. Non-scheduled flights need permission including 'where payment is made for carriage' – it is unclear what this term means, but could it include payment for refuelling? All other aircraft have the right to land or fly across the United Kingdom without prior permission. However, each captain has to file a flight plan with Eurocontrol, the European Organisation for the Safety of Air Navigation*.

*The practice whereby civil aircraft using military or civilian airfields do not have to give the names of the passengers, or where planes can similarly overfly a country, seems an extraordinary breach in security arrangements. For example, under the Police and Criminal Justice Bill currently going through Parliament the details of all passengers on internal UK flights have to be registered and checked.

On the same day, 12 December 2005, Jack Straw, the Foreign Secretary, replied to a question:

> 'We would not assist ... where there were grounds to believe that the person would face a real risk of torture'

Why does the Foreign Secretary refer only to 'torture' and not to inhuman and degrading treatment, as well? He went on to say to say that there had been 'No requests since 11 September 2001'.

There had been two cases in 1998, when the United Kingdom had agreed, to enable people to stand trial in the United States. There had also been a request in 1998 for the transfer of a person to a third country, which he thought had been refused.

Throughout this period, innumerable questions about the role of British intelligence or security agencies (MI6 and MI5) were met with the standard answer: 'It is not the Government's policy to comment on intelligence matters'. However, in January 2006 there was a very significant shift in the government's response. On 23 January, a letter from the Foreign Secretary to Sir Menzies Campbell (Liberal Democrat spokesperson) finally gave the game away. Mr Straw said that as part of close cooperation in fighting terrorism with the United States the government had now:

> 'made clear to the US authorities [that]...
> i) we expect them to seek permission to render detainees via United Kingdom territory and airspace
> ii) permission would only be granted if they were satisfied the rendition would accord with United Kingdom law and our international obligations.'

The third point referred to the United Kingdom's understanding of obligations under the UN Convention on Torture, as distinct from the US interpretation, which sought not only to limit obligations about torture, but also sought to narrow the interpretation of what torture means. It thus refers to any 'rendition', not just 'extraordinary rendition'.

The government had, finally, been forced publicly to set out a new policy.

On the very same day, 23 January, the *New Statesman* magazine published an article by Martin Bright revealing the content of a leaked memorandum from the Senior Legal Advisor in the Foreign Office to the Prime Minister's Office. The memo said that extraordinary rendition was 'almost certainly illegal'. That rendition – the transfer of a person from one jurisdiction to another – might be legal but in very, very limited circumstances as the International Covenant on Civil and Political Rights and the European Convention on Human Rights imposed obligations where 'a person is arbitrarily detained or expelled outside the normal legal process'. Furthermore, though the United States says it relies on 'assurances' that people will not be tortured, 'we should not cast doubt as we are doing the same things, e.g. Algeria, etc.'*

* The United Kingdom has sought 'assurances' against torture and execution from Jordan, Libya, Algeria and Morocco, in order to deport people to these countries since they have insufficient evidence to bring them to court in the UK.

On a related issue, the memo asks:

> *Question: 'How do we know whether those our Armed Forces helped to capture in Iraq or Afghanistan have subsequently been sent to interrogation centres?'*
> *Answer: 'We have no mechanism for establishing this'.*

In other words they do not know, and do not care. This sums up the attitude of the United Kingdom government (and other European Union governments) towards CIA flights and rendition. Having talked to those in touch with intelligence sources, their attitude, reflecting government policy, was summed up by one source: 'We turned a blind eye, we don't want to know.'

The role of European Union intelligence agencies

The second issue I want to address is the role of European Union agencies (intelligence and security) in targeting suspects, putting them under surveillance, and sharing intelligence between themselves and with the United States. In other words, what part have European Union intelligence and security agencies played in targeting people, whether in the European Union or outside?

In the United Kingdom we know that, as long ago as June 1976, at the inception of the Trevi group, in the fight against terrorism MI5 was designated as the contact point for 'intelligence', while 'policing matters' went to the police. MI5 has thus had, for a very long time, a remit alongside MI6 (the Secret Intelligence Service or SIS, external) within the European Union.

In July 2005, MI6 supplied the Greek authorities with a list of 5,364 people to be investigated in the wake of the 7 and 21 July attacks in London. Such a list would likely have been drawn up jointly by MI5 and MI6. As a result 1,212 people were arrested and interrogated. And, in a separate intelligence operation, 28 Pakistani men were abducted and held for between two and six days, with MI6 officers in attendance (see *Spokesman 89*). How many other European Union states were sent lists?

I was alerted, in November 2005, to a *Der Speigel* article on 'Camolin' (sometimes referred to as 'Alliance Base'). This is an intelligence operation involving agencies from the United States, Germany, France, United Kingdom, Canada and Australia. It is based at a military barracks outside Paris where regular meetings take place – backed by a secure communications network.

Apparently the *modus operandi* is that European Union intelligence agencies build up dossiers on suspected individuals (in Iraq, Afghanistan, etc) which are handed over to the CIA to act on – rendition, detention, interrogation, assassination? Who knows? 'Camolin' may be just one example of a hidden network of CIA-funded centres called Counter Terrorist Intelligence Centres. In the spring of 2005, the CIA's Deputy Director of Operations, Jose A Rodriguez Jnr, told a closed session of the House and Senate Intelligence Committee that more than 25 Counter Terrorist Intelligence Centres were responsible for over 3,000 arrests. The list of countries with such Centres is said to include sixteen in Europe, six in Asia, eight in the Middle East/North Africa, plus Australia and

Canada. If there are sixteen in Europe, including ones in France, Italy, Germany, Poland and Romania, what are they doing?

Apparently, the Centres' *modus operandi* varies from country to country – from those countries with whom the CIA works closely, which have trusted agencies, to those where the national agencies are not trusted or corrupt. In the latter case, the CIA hires experts or specific local units (with the tacit approval of governments).

The question of transit for CIA flights

There have been informal agreements between European Union governments and the United States to allow stop-over flights (in transit) to and from the United States since around 1998. This was to send people (refugees) back to Africa, the Middle East and Asia.

A year after the invasion of Iraq, there was the 'New Transatlantic Agenda: EU-US meeting on Justice and Home Affairs' in Athens. The minutes record that 'Both sides agreed on ... increased use of European transit facilities to support the return of criminals and inadmissible aliens'. Who are the 'criminals'? Are they convicted or suspected, and of what crimes? Who are the 'inadmissible aliens'? Why, and where are they being returned to? In addition to the why and the where and the future they might face, there is the crucial question: under what conditions are these people being transited in and through the European Union? Are they shackled or sedated?

No figures have ever been published of how many flights there have been – whether for criminals, refugees or those being rendered. A number of European Union governments have colluded, simply by turning a 'blind eye', failing to ask any questions. So that, if asked, they could say no requests for transit or over-flying have been received.

All European Union governments should be required to tell the United States that:

a. they have to seek permission to render detainees (whether as part of the 'war on terrorism', as criminals or refugees) via their territory or airspace.
b. that permission would only be granted if they are satisfied that national and international obligations are being met, including those on torture, inhuman or degrading treatment.
c. to this end, all non-scheduled flights would be required to provide the names of all passengers – in addition to that information already required – and to say whether any of the passengers are restrained or sedated in any way.
d. that assurances from the United States as to meeting these obligations would be subject to random spot checks at any point of transit in the European Union.

If the United States has nothing to hide, then it has nothing to fear.