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- Editorial: Bending of Laws
- 2005 May Be Remembered as Year of Torture and Rendition
- Time Ripe for Making Peace
- Extremism at Home and Abroad
- Warlords Set to Dominate Afghanistan's Parliament
- Contempt Is the Latest Sleaze in Public Life
- Merkel Emerges as Politician to Watch in Europe

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2005 May Be Remembered as Year of Torture and Rendition

William Fisher, Arab News

As Secretary of State Condoleeza Rice stilettoes her way across Europe facing tough questions about who, where and how the US treats prisoners in the "global war on terror", 2005 may be remembered as the year "torture" and "rendition" became parts of the everyday American vocabulary.

The latest iteration of these issues arose from the Washington Post's recent disclosure that the US Central Intelligence Agency (CIA) was using its fleet of secret aircraft to render high-value terror suspects to secret prisons it is reportedly operating in former Soviet bloc states in Eastern Europe.

To avoid compromising national security, The Post did not name the countries, but they have been widely reported to be Poland and Romania. At former Soviet gulags there, "ghost prisoners" simply fall off the radar — unnamed, unregistered, without access to lawyers, family members, or the International Committee of the Red Cross.

The Post reported that prisoners were routinely tortured, using such techniques as "waterboarding" — submerging a prisoner in restraints in water to convince him he was drowning — mock execution, prolonged shackling, being threatened with dogs, and "cold cell," in which prisoners are held naked in low temperatures and doused with cold water.

The Rice trip was intended to rebuild America's damaged bridges with its European allies. German Chancellor Angela

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Merkel was particularly eager to end German-American bickering over the Iraq war. Instead, before boarding her flight, Rice felt compelled to deliver a statement asserting that as a “matter of policy” America “does not torture”, while sidestepping the issue of the alleged secret prisons.

But in Europe, torture and rendition refused to go away. They were a central theme in virtually all of the press appearances Rice made following her meetings with European leaders. The issues were particularly contentious in Germany, where a German citizen, Khaled Al-Masri, announced he is suing the former CIA Director George Tenet for forcibly taking him from Macedonia and to Afghanistan, where he was imprisoned incommunicado for five months. The American Civil Liberties Union (ACLU) is pursuing the case on the German’s behalf. Rendition is known to have been a CIA practice for some years. But its frequency increased exponentially after 9/11, with reportedly dozens of prisoners being kidnapped from Italy, Sweden and other European countries, as well as from the US, and sent to other countries with well-known histories of torturing prisoners. Italy is currently suing the US for kidnapping an Italian citizen on Italian soil.

The Center for Constitutional Rights (CCR), a major advocacy group, filed the first court challenge to rendition this year. The case is pending.

Fuelling the prisoner fire, Louise Arbour, the high commissioner for human rights at the United Nations, said that the US-led fight against terrorism is eroding the time-honored international prohibition of torture and other forms of cruel or degrading treatment of prisoners. She said that holding suspects incommunicado in itself amounts to torture.

But America’s European problems are only the latest in a long litany of rendition and torture issues that began to come to light with release of the photographs of prisoner abuse at Abu Ghraib prison in Iraq.

That disclosure created a firestorm of protests and questions that eventually implicated other military prisons in Iraq, the US naval base at Guantanamo Bay, Cuba, Bagram Air Force Base in Afghanistan, and other detention centers around the world.

The Department of Defense (DOD) has carried out 15 separate investigations of prisoner abuse and rendition issues. A number of enlisted soldiers were court-martialed and sent to jail, and a few higher-ranking officers were reprimanded or demoted. But no accountability was demanded of the CIA, private contractors, or the Bush Administration, which critics say failed to train interrogators and created an environment of legal abuse by using presidential power to designate people as “enemy combatants” and thus deny them the protections of the Geneva Conventions.

The most recent of these investigations recommended that Maj. Gen. Geoffrey Miller be reprimanded for his mistreatment of Guantanamo prisoners and for “migrating” his “aggressive” interrogation techniques to Iraq. But a higher military authority rejected the recommendation.

Meanwhile, Guantanamo Bay has become a legal nightmare for the US. American authorities sent more than 800 alleged terrorists to the prison at Guantanamo Bay, largely from Afghanistan, but from other countries as well. Guantanamo was chosen because it was thought to be beyond the reach of US law, but courts ruled that the base, which is leased from the government of Cuba, was effectively under American control.

The ACLU and other organizations sued the government under the Freedom of Information Act (FOIA) and obtained a massive trove of documents in which agents of the Federal Bureau of Investigation (FBI) reported that military interrogators were abusing prisoners.

US soldiers have also been charged with the murder of a detainee in Afghanistan.

Equally problematic, the Defense Department’s system for reviewing the status of each prisoner denies the accused the most basic legal rights, including access to lawyers, the opportunity to see the evidence against them — which is often classified — or to call witnesses to prove they were being held in error. Several US civilian courts ruled the system unconstitutional and no trials have been conducted.

Meanwhile, a federal appeals court panel ruled unanimously that President Bush has the authority to indefinitely detain an

American citizen, Jose Padilla, arrested in the US, as an enemy combatant.

But another appeals court questioned the Bush administration's operations at Guantanamo Bay, Cuba (Gitmo), where almost all detainees have been categorized by military tribunals as enemy combatants.

Padilla was charged in civilian court with lesser offenses two weeks ago in order to keep the Supreme Court from hearing his appeal.

In an earlier case involving a non-American, Yaser Esam Hamdi, the Supreme Court ruled that an American citizen could be detained by President Bush as an enemy combatant because he was purportedly captured while fighting in Afghanistan. But, even under that circumstance, the court added to the ambiguity by ruling that Hamdi was entitled under the Constitution to contest the allegations made against him by "a neutral decision-maker." Hamdi was hurriedly sent back to his home country before his case could be resolved.

After last year's Supreme Court ruling, the Pentagon set up a new system of tribunals of US military officers to review the detainees' status. The tribunals have been criticized by many senior military lawyers, who have called them kangaroo courts. The Pentagon is currently holding more than 500 prisoners at GITMO. More than 200 of them are currently staging a hunger strike to protest their treatment.

Brian J. Foley, a professor at Florida Coastal Law School, told IPS regarding the Padilla case, "For a court to say that any person imprisoned by the government, especially an American citizen, can be held without access to a judge for an evidentiary hearing and without any right to habeas corpus is frightening, and contrary to hundreds of years of our legal tradition."

Torture has — critics say belatedly — recently become a headline-grabbing issue in Congress. Sen. Lindsay Graham, a conservative Republican from South Carolina and a former military judge, introduced a measure that would make the Uniform Code of Military Justice (UCMJ) the absolute rulebook for how prisoners should be treated. The UCMJ forbids cruel, inhumane or degrading treatment of detainees. The measure

was approved 91 to 9. The measure rejected a detainee's right to file for habeas corpus, but provided for a Federal appeals court to review cases involving sentences of more than 10 years. At the same time, the senate overwhelmingly passed a measure by Arizona Republican Sen. John McCain that would prohibit cruel, inhumane or degrading treatment of prisoners by anyone representing the US - including the CIA. The Bush administration, led by Vice President Dick Cheney, has been lobbying to exempt the CIA, threatening a presidential veto if it were passed. It now appears that the administration's objections have failed, and Cheney is now seeking language that would protect CIA operatives from punishment in certain circumstances. The Senate also passed an amendment mandating that the Defense Secretary inform Congress about US-run secret prison facilities in foreign countries.

But at the same time, the Republican-led Senate rejected a Democratic effort to establish an independent commission to investigate US military interrogation practices. The 55 to 43 vote was split largely along party lines. Democrats were trying to set up a panel along the lines of the 9/11 Commission to investigate US detainee treatment in Iraq, Afghanistan, and at Guantanamo.

The McCain proposal will be a top item on the Senate's agenda when it returns from its Thanksgiving recess next week. With the 2006 Congressional elections less than a year away, and President Bush's poll numbers falling, many Republicans as well as almost all Democrats are struggling to distance themselves from his positions. That is likely to ensure that torture and rendition are not disappearing from the national dialogue any time soon.



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