Chapter iv

The International Responsibility of EU in US “Extraordinary Renditions” of Suspected Terrorists

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“One by one, the terrorists are learning the meaning of American Justice”
President George W. Bush, State of the Union, 2003


Since the appalling attacks of September 11, 2001 we have been immersed in what is generally known as the “war against terrorism”, the so-called “first war of the 21st Century” whose main victim may well be the international order itself, the basic principles of co-existence which have governed international relations over recent decades. Some of the measures adopted by the United States Administration in the “war on terror” can undoubtedly be described as an attack on many international obligations. The use of force outside the legal framework of the United Nations Charter; the refusal to apply the Geneva Conventions to prisoners suspected of terrorist offences; the transfer of prisoners with no criminal procedure guarantees; the existence of secret prisons; the so-called Legal Black Hole at Guantanamo; the use of torture in interrogations despite the absolute prohibition in international conventions. In the words of Professor Sands,

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2 “Bush talks of first war of the 21st century”. The Guardian, 14 September 2001, p. 5. “President Bush arrives in New York today to pay his first visit to the scene of the attack on the World Trade Centre, the main target of what he described as the “first war of the 21st century”.”
the fight against terrorism appears to have become a horrifying opportunity to
develop the Anti-International Law Project.\footnote{“International Law?...I don’t know what you are talking about by international law”, President Bush, December 2003. SANDS, Ph. “Lawless World? The Bush Administration and Iraq: Issues of International Legality and Criminality”, Hastings International & Comparative Law, 29, 2006, p.301 and 307.}

The apparent vulnerability of the Western model in the face of the challenge
presented by the new terrorist techniques appears to suggest that “everything
has changed” and the system must be revised. This philosophy is the basis for an
approach to anti-terrorist policy which pays less attention to the protection of the
civil rights of individuals involved in such activities and is more concerned with
preventing new attacks and safeguarding national security.

This lack of balance is nothing new at all, it is, in short, a classic danger for
States in their attempts to combat domestic terrorism. Now, however, globalisation
of the terrorist threat has transferred what were formerly considered internal
deviations to the international scene.

In this context, the authority of Law has already been undermined in many
important ways. As the United Nations High Commissioner for Human Rights,
Mary Robinson highlighted in the aftermath of 9/11, despite efforts to frame the
response to terrorism within the framework of crimes under national and interna-
tional law, an alternative language dominated. The language which has shaped
to a much larger extent the response at all levels, has spoken of a war on terrorism.
As such, it has brought a subtle change in emphasis in many parts of the world:
order and security often involved curtailment of democracy and human rights.
Misuse of language has also led to Orweillian euphemisms, so that “coercive
interrogation' is used instead of torture, or cruel and inhuman treatment: kidnap-

Considering that neither conventional judicial instruments nor those estab-
lished under the framework of the laws of war could effectively counter the new
forms of international terrorism, the White House decided to develop new legal
concepts such as “enemy combatant”, “indefinite detention” and “extraordinary
rendition”. With the exercise of executive powers by the Commander-in-Chief
authorised by Congress\footnote{“The President is authorized to use all necessary and appropriate force against those
nations, organizations, or persons he determines planned, authorized, committed or
aided the terrorist attacks that occurred on September 11, 2001, or harboured such
organisations or persons, in order to prevent any future acts of international terrorism
against the United States by such nations, organizations or persons”. Authorization for
Clause, Article II Constitution. 13/11/2001, Military Order on the Detention Treatment
and Trial of Certain Non–Citizens in the War against Terrorism.} providing the legal basis, the United States has progres-

sively woven a clandestine “spider web” of disappearances, secret detentions and