

Germany and the USA in the »War against Terror«: Is Extraordinary Rendition Putting Transatlantic Cooperation under Strain?

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When President George W. Bush announced the »war against terror« on September 20, 2001 he made clear that, besides the warning to hostile regimes, this would have definite consequences for the USA's closest allies, both old and new. In this way the American president presented the world with a choice: »Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists« (Bush 2001). In this way President Bush emphasized that the fight against international terrorism threatened all pluralistic and free nations. Alongside military action in the course of Operation Enduring Freedom police and secret service cooperation between the USA and members of the anti-terror alliance should also prevent international terrorism from acquiring territory and financial resources.

Germany was an early participant in common measures in the anti-terror fight and expressed its solidarity with the USA on September 12, 2001 with its agreement to NATO's *casus foederis*. Since then Germany has been an ally of the USA in its global »war against terror.« However, it is clear from the Iraq war that Washington and Berlin can act not only side by side, but also, increasingly, against one another. Accusations of alleged CIA secret prisons and prisoner transports in Europe are putting transatlantic cooperation to a severe test. The mutual accusations arising from this on the nonmilitary level threaten the transatlantic value system and consequently can hinder transatlantic cooperation in the fight against terrorism. The central question, therefore, is: to what extent has transatlantic cooperation in the »war against terror« been changed by the public debate on the USA's rendition program and what consequences does this have for German–American relations?

In what follows we shall first explain the so-called rendition program in more detail, in order to explain the accusations of possible German participation in this controversial practice. Finally, against the background of this question, we have to demonstrate the consequences of these accusations for transatlantic relations.

The US Rendition Program

In November 2005 the Washington Post published an article in which journalist Dana Priest reported on the existence of alleged secret CIA prisons in which terror suspects were detained without legal basis and were interrogated using torture (Priest 2005a: A01). Priest referred particularly to a number of unnamed East European states on whose territory these secret prisons were located. These states were soon identified as Poland and Romania on the basis of an analysis of flight data by the American human rights group Human Rights Watch (Amnesty International 2006). The American TV channel ABC News reported on November 5, 2005 on the existence of secret detention centers in Poland and Romania.

The Establishment of the Rendition Program under the Clinton Administration

The practice of such secret transports is no novelty in American dealings with terror suspects. This procedure, that is, the transport of prisoners in neglect of the rule of law from one state to another, was widely known by the term »extraordinary rendition« (»rendition« for short) after the CIA program of the same name (Bartelt 2006: 32). This was confirmed by Secretary of State Condoleezza Rice in December 2005: »For decades, the United States and other countries have used ›renditions‹ to transport terrorist suspects from one country where they were captured to their home country or to other countries where they can be questioned, held, or brought to justice« (Rice 2005).

Alarmed by secret service reports warning that Osama bin Laden planned to get hold of weapons of mass destruction in the mid-1990s the US National Security Council (NSC) developed a CIA program to destroy Al Qaeda and its operational cells, as well as to arrest high-ranking members of the global terror network (Scheuer 2005: 10). The CIA's rendition program was from the beginning directed towards the global terror network operated by Islamic fundamentalists, known under the name of Al Qaeda. This network consists of a collection of terror cells worldwide whose operational members plan and carry out terrorist attacks. The aim of renditions, however, was originally limited to the arrest of terror suspects in foreign countries and their transportation to their home countries where proceedings were already under way against them. This was

confirmed by former chief of the so-called Bin Laden unit of the CIA's anti-terror center, Michael Scheuer: »It was never intended to talk to any of these people. Success, at least as the Agency defined it, was to get someone, who was a danger to us or our allies, ›off the street‹ and, when we got him, to grab whatever documents he had with him. We knew that once he was captured he had been trained to either fabricate or to give us a great deal of information that we would chase for months and it would lead nowhere. So interrogations were always a very minor concern before 9/11« (Marty 2006: 10). From the CIA's point of view it was merely pursuing unofficial cooperation between authorities for the purpose of the lawful prosecution of terrorists in their own countries. Certain conditions were required therefore for renditions before September 11, 2001. First, an outstanding legal process must be in being against the suspect in his home country. Second, the CIA needed a dossier or suspect profile based on secret-service information and at least in principle examined by a lawyer. Third, Langley at least had to try to obtain the agreement of a country to seize the terror suspect on its territory and finally also the agreement of the host country. The USA was often content with diplomatic assurances of the host country that the terror suspect would be treated in accordance with the relevant national legal standards without bothering itself about the subsequent fate of the prisoner (Marty 2006: 10). This sometimes may have had far-reaching consequences for the person concerned. For example, in 1998 the Wall Street Journal reported on five terror suspects who were arrested by the CIA in Albania and taken to Egypt, where two of them had already been condemned to death by an Egyptian court in absentia. This judgment was carried out after the prisoners were handed over (Mayer 2005).

But Washington set great store by the fact that the practice of rendition was in accord with American law and the American interpretation of international human rights. This was confirmed by a judgment of the Supreme Court in 1992 in which it upheld the decision of a US court after the forcible handing over of a man from Mexico (United States vs. Alvarez-Machain 1992: 655). The US Constitutional Court referred in this connection to its own precedent of 1886 in which it had argued: »There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will« (Ker vs. Illinois, 1886: 436). By that the court implies that this also applies to people who have contravened American law but who are outside American jurisdiction, that is, abroad. Their arrest

on foreign territory for repatriation to the United States is consequently regarded as legal and legitimate by the Supreme Court. The CIA's rendition program ultimately took up this line of argument and applied it at global level. In this connection one can in fact talk of the USA as a »global policeman.« However, the USA is not the only country which carries out the abduction of terror suspects from abroad. US Secretary of State Condoleezza Rice rightly pointed recently to the case of »Carlos the Jackal« in which one of the most highly paid contract terrorists was arrested by the French secret service in Sudan in 1994 and brought before a French court (Rice 2005). Similarly, the leader of the Kurdish Workers' Party (PKK), Abdullah Ocalan, was abducted in Kenya by the Turkish secret service, while high-ranking Nazi and SS leader Adolf Eichmann was kidnapped by the Israeli Mossad in May 1960.

Transformation and Restructuring under the Bush Administration

After the attacks of September 11, 2001 the rendition program was built up to become one of the central instruments in the American »war against terror« (Bush 2006). The Bush administration put strong emphasis on gathering information on possible terrorist suspects, as well as knowledge of the structure, planning and organization of Al Qaeda, and so put the CIA in particular under enormous pressure to deliver results. In the run up to the attacks the American secret service organization had failed, or had done so only unsatisfactorily, to follow up certain clues and the very real fear of a second attack brought the CIA in the following period under real pressure to vindicate itself. In a climate of heightened threat perception the Bush administration obtained the public support it needed to win the »war against terror« with all necessary means.

This new atmosphere of threat also had consequences for the practice of rendition. It changed in terms of both extent and focus. Instead of, as previously, handing over terrorist suspects from one country to another, where they as a rule were awaited by legal proceedings, the objective of the program changed to bringing terrorist suspects outside the influence of any jurisdiction and to keep them there with the aim of extracting as much information as possible from them. President George W. Bush justified this change of strategy with reference to the prevention of further terrorist attacks: »The security of our nation and the lives of our citizens depend on our ability to learn what these terrorists know questioning the detainees in this program has given us information that

has saved innocent lives by helping us stop new attacks – here in the United States and across the world« (Bush 2006).

Behind the building up and extension of rendition we have described there were essentially two reasons: first, the Bush administration exerted enormous pressure on all responsible departments and authorities – particularly the CIA – to increase the intensity and aggression of the fight against international terrorism. Former chief of the CIA Counter Terrorism Center Cofer Black put this in unambiguous terms before the US Senate: »After 9/11, the gloves came off« (Priest/Gellman 2002: A01). Second, the CIA set up its own detention centers whose existence was confirmed by the American president on September 6, 2006: »In some cases, we determine that individuals we have captured pose a significant threat, or may have intelligence that we and our allies need to have to prevent new attacks. ... In these cases, it has been necessary to move these individuals to an environment where they can be held secretly, questioned by experts, and – when appropriate – prosecuted for terrorist acts« (Bush 2006). This represents the decisive transformation of the rendition program since now the aim is no longer to hand over transmission to the courts of countries in which they might be threatened by torture and death, but rather to detain them in »unlegislated areas« in which American government officials among others even apply so-called enhanced interrogation techniques in order to obtain as much information as possible from the prisoners. It is therefore no longer a matter only of keeping potential terrorists »off the streets«, but beyond that of using them as sources of information. In this way also the criminal prosecution of individual perpetrators is no longer in the forefront. Rather the prevention of future attacks has highest priority (Braml 2003: 25).

The so-called outsourcing of torture in the course of renditions made it possible for the USA, as signatory of the anti-torture convention, to observe the values and norms of the international community at least on its own territory and so to avoid the embarrassing situation of having to justify itself on account of illegal forms of interrogation and arrest without charge outside its own territory. »The CIA wanted secret locations where it could have complete control over the interrogations and debriefings, free from the prying eyes of the international media, free from monitoring by human rights groups, and, most important, far from the jurisdiction of the American legal system« (Risen 2006: 29).

The American answer to combating the global terror network of Al Qaeda was the establishment of a global rendition network which Dick

Marty, rapporteur of the Council of Europe, has vividly described as a »global spider's web« (Marty 2006: 9). However, distinctions must be made between the individual components of this network. First, CIA establishments, so-called black sites, must be distinguished from military prisons. To the latter belong the US Naval Base at Guantanamo Bay in Cuba, Bagram in Afghanistan, or Abu Ghraib in Iraq. These are formally subordinate to the Pentagon and their location is, as a rule, in contrast to the CIA prisons, publicly known. This distinction is also confirmed by President Bush: »In addition to the terrorists held at Guantanamo, a small number of suspected terrorist leaders and operatives captured during the war [in Afghanistan] have been held and questioned outside the United States, in a separate program operated by the Central Intelligence Agency« (Bush 2006). According to the investigations of Council of Europe rapporteur Dick Marty the so-called black sites can in turn be distinguished into four categories: alongside the so-called stopover points which chiefly serve the refueling of aircraft, there are staging points for the preparation of renditions – presumably including the US military bases in Frankfurt am Main and Ramstein – one-off pick-up points, where single terrorist suspects are apprehended, and finally so-called drop-off points, in the vicinity of which secret CIA prisons may presumably be found. The last category applies to the suspected establishments in Poland and Romania (Marty 2006: 13).

A further level of escalation – alongside the strategic extension of the rendition program after September 11, 2001 – concerns above all the treatment of the persons affected by the program. What is at issue here is the accusation of torture, which should first of all be defined. The universal prohibition of torture is laid down in Article 5 of the General Declaration of Human Rights of 1948, signed among others by Poland, Germany and the United States (Randelzhofer 1998: 126). The concept of torture is defined in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of June 1987 in Article 1 as »any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official

capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.« The ban on torture also applies under »extraordinary circumstances« such as war or internal instability (Garcis/Varwick 2002: 164 f.).

The Bush administration often refers to the fact that the »war against terror« is a new form of conflict between non-state actors on the one hand and state actors on the other. With this form of asymmetrical conflict international law and the conventions of war do not apply since we are not dealing with the traditional form of inter-state conflict. Following this logic the US Justice Department in January 2002 drew up an official legal position in accordance with which the Geneva Convention on the treatment of prisoners of war does not apply to terrorists of Al Qaeda since they operate statelessly. The legal report of the US Justice Department in this way stresses that the United States at least formally is not bound by the UN torture convention (Yoo 2002). On the basis of this report, against which, by the way, the US Department of State raised objections in 2002, the Bush administration introduced the controversial concept of enemy combatant. Since international law does not recognize this concept these prisoners do not enjoy the protection of universal human rights (Gonzales 2002).

The motives behind this decision can be understood against the background of the strategic extension of the rendition program and the secret service surveillance associated with it: »In this new war, the most important source of information on where the terrorists are hiding and what they are planning is the terrorists themselves. ... To win the war on terror, we must be able to detain, question, and, when appropriate, prosecute terrorists captured here in America, and on the battlefields around the world. ... We have the right under the laws of war, and we have an obligation to the American people, to detain these enemies and stop them from rejoining the battle« (Bush 2006). Although the Bush administration does not want the »war against terror« to be understood as a war in the sense of international law, at the same time the President also refers to the extraordinary circumstances of the conventions of war as justification of tougher action against international terrorism. The present US Attorney General Alberto R. Gonzales was even plainer in a memorandum to the President of January 25, 2002, declaring the Geneva Convention on the interrogation of prisoners of war in relation to the new paradigm in the »war against terror« as »obsolete« (Gonzales 2002). Gonzales also publicly defended »harsh questioning« in the implementa-

tion of extraordinary renditions (Gonzales 2005: A03). At the same time, however, President George W. Bush unambiguously rejected all accusations of torture: »The United States does not torture ... I have not authorized it – and I will not authorize it« (Bush 2006). In this connection the President referred to his support for the Detainee Treatment Act (DTA) of 2005 which lays down legal standards for the treatment of prisoners by the US authorities worldwide.

This law goes back to an additional clause added to the Department of Defense Appropriations Act, 2006 as S.Amdt 1977 by, among others, Senator John McCain (R-AZ) in reaction to the mistreatment of prisoners by American soldiers at Abu Ghraib. After the President had threatened to use his veto a compromise was reached which resulted in the Detainee Treatment Act. The law includes the laying down of American standards on the treatment and interrogation of prisoners, although these standards – according to section 1002 of the DTA – apply only to prisoners questioned in establishments of the US Defense Department. This means that these standards certainly apply to military prisons such as Abu Ghraib or Guantanamo Bay but not to possible CIA black sites. Basically, therefore, the President can apply tougher interrogation methods and so circumvent the DTA by simply transferring terrorist suspects to a non-military CIA prison. Looked at this way the DTA even strengthens the practice of rendition since it represents a possibility, with the help of tougher interrogation methods and by circumventing the DTA, to obtain more information from terrorist suspects (Arsalan 2006: 261f.). Since President Bush indirectly confirmed the existence of secret CIA prisons outside the USA in his speech of September 6, 2006 we can assume that this is a realistic option for the Bush administration (Bush 2006).

Indeed, the accusations of torture against the USA are based on the assertions of individuals; however, the Council of Europe rapporteur Dick Marty, on the basis of clear parallels between the individual assertions of those concerned, who have little or no relation to one another, came to the conclusion that at least in the arrest of terrorist suspects there is a routine *modus operandi* for the treatment of prisoners in the case of renditions which is applied worldwide by well trained elite agents of the CIA. In this twenty-minute so-called security check the suspects are as a rule stripped as well as subjected to an uncomfortable and intimate physical examination (Marty 2006: 20ff). Although one can argue whether such a procedure constitutes torture, according to Marty this form of

treatment of prisoners (which also involves lack of legal advice and no contact with the outside world) undoubtedly constitutes degrading and inhuman treatment, as forbidden in Article 5 of the Universal Declaration of Human Rights.

On top of these forms of mistreatment the Washington Post cited other cases of so-called enhanced interrogation techniques which come close to the concept of torture in the sense of the anti-torture convention. These include, for example, so-called waterboarding,¹ blows, sleep and water deprivation, as well as the application of extreme temperatures, and even »deprivation of air«² (Priest 2005b: A01). The President has so far rejected accusations of torture by US government officials. It must be noted, however, that the Bush administration sets the criteria for meeting the accusations of torture considerably higher than the anti-torture convention of the United Nations. For example, in a report of the US Justice Department: »We conclude that torture ... covers only extreme acts. Where the pain is physical, it must be of an intensity akin to that which accompanies serious physical injury such as death or organ failure. Severe mental pain requires suffering not just at the moment of the infliction but it also requires lasting psychological harm, such as seen in mental disorders like posttraumatic stress disorder ... Because the acts inflicting torture are extreme, there is a significant range of acts that though they might constitute cruel, inhuman, or degrading treatment or punishment fail to rise to the level of torture« (Bybee 2002: 46). This also means that it is possible to justify cruel, inhuman or degrading treatment of Al Qaeda terrorist suspects on the basis of the USA's right of self-defense in the »war against terror«: »If a government defendant were to harm an enemy combatant during an interrogation ... he would be doing so in order to prevent further attacks on the United States by the al Qaeda terrorist network. In that case, we believe that he could argue that his actions were justified by the executive branch's constitutional authority to protect the nation from attack« (Bybee 2002: 46). In other words, from an American standpoint in the »war against terror« in some circumstances the end justifies the means if a terror threat against the American people or the allies of the USA can be averted.

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1. The prisoner's head is held under water until he has the feeling he is drowning.
 2. The prisoner is put in a windowless room. With the help of an air conditioning unit the air supply is reduced so much that the prisoner has the feeling he will suffocate and passes out.

Germany's Role in the Context of the »War against Terror«

Particularly on the part of the European Union (EU) since September 11, 2001 there has been constant criticism of secret prisons and the American practice of rendition. In unusually unambiguous terms, on the commemoration day for the victims of the terror attacks on the World Trade Center and the Pentagon five years after the event Chancellor Angela Merkel condemned the practice of rendition: »The use of such prisons is not compatible with my understanding of the rule of law ... Even in the fight against terrorism, which represents an unprecedented challenge to our free societies, the end may not justify the means.« German Minister of the Interior Wolfgang Schäuble also made clear that in the case of the ban on torture there can be no turning a blind eye (*Süddeutsche Zeitung* 2006: 1). All the more disconcerting – after the revelations of the *Washington Post* – was the fact that possibly members of the EU, including Germany, as allies in the »war against terror« allowed this practice on their territory or could have taken advantage of information derived from such sources. For example, the President of the Federal Office for the Protection of the Constitution Heinz Fromm declared that in the German anti-terror campaign even information obtained through torture should be used: »The possibility that it was not obtained in accordance with our principles of the rule of law should not mean that we ignore it« (*Berliner Zeitung* 2006: 5). However, among the German population such an attitude meets with a clear rejection: 82.4 percent reject torture or the threat of torture as a means in the fight against terrorism, while 62.7 percent regard the use of secret service information presumably obtained through torture as improper (*Lübcke/Irlenkaeuser* 2006: 3 f). This rejection of torture, by the way, is also shared by the American people, although agreement there with the application of torture, at 35 percent, is comparatively higher than in Germany (*CBS/NYT* 2006).

Transatlantic cooperation in the »war against terror« will moreover be further impeded by an increasingly diverging perception of the threat. For example, the proportion of people who feel threatened by terrorism in Germany has fallen clearly below 50 percent since 2004 (*BMI/BMJ* 2006: 78), while in the USA a clear majority of 76 percent still feel the terrorist threat from Islamic fundamentalism as a growing and direct threat to the United States (*CBS/NYT* 2006). This difference in perception could in future result in concrete differences which will considerably

impede transatlantic cooperation in the »war against terror.« This concerns, for example, the division between the police and the secret services. In his last meeting with German Minister of the Interior Wolfgang Schäuble in October 2006 Stewart A. Baker of the Department for Homeland Security was insistent that Germany recognize the lessons the USA had drawn from the attacks of September 11, 2001. Washington is familiar with the German view of a strict separation between police and secret services, »yet in the USA this attitude has been discredited by September 11« (Tagesspiegel 2006).

Alongside the possible exploitation of information obtained under torture or the threat of torture the Red-Green government stands under suspicion of, at best, tolerating the US rendition program in Europe, and at worst of actively supporting it. The alleged abduction of German citizen Khaled El-Masri in Macedonia and his subsequent detention in a secret prison in Afghanistan, as well as the internment of German-Türk Murat Kurnaz in Guantanamo Bay with the possible approval of the then German government are examples of this. Besides the leaking out of these individual cases research by ARD's »Report Mainz« revealed that prisoner transports of terrorist suspects in US military aircraft could have been planned and coordinated even from German soil (Förster/Fras 2006: 5). The program bases this on a secret US military document which allegedly indicates that the abduction of six Algerians – the so-called *Algerian six* – from Sarajevo to Guantanamo Bay in 2002 was coordinated from the military base of the American military command in Europe (USEUCOM) in Stuttgart-Vaihingen. These accusations are particularly explosive because according to statements of the German Justice Ministry USEUCOM headquarters in Stuttgart-Vaihingen are not on US sovereign territory but German territory, not to mention the fact that since 2000 there have been two German liaison officers at the base in question.

However, so far there has been concrete proof neither of German participation in renditions nor that the German authorities have made use of information which may have been obtained via torture. This is confirmed by the concluding report of the European Parliament which, however, at the same time cites a wealth of circumstantial evidence that, according to the evaluation of rapporteur Giovanni Claudio Fava, makes it »inconceivable« that European governments have not noticed anything of events on their territory or in their airspace (Bolesch 2006: 6). The report refers in particular to »at least 1,245 CIA flights« which have

passed through European airspace or started directly from European airports. On German soil the report counts 336 stopovers of CIA planes, identified by their aircraft number. However, it must be taken into account that only two percent of all CIA flights are for renditions. So explains the former head of the so-called Bin Laden Unit at the CIA's Anti-Terror Center, Michael Scheuer: »There are lots of reasons other than moving prisoners to have aircraft. It all depends on what you are doing. ... it could be a plane load of weapons. It could be food ... it could be rations. Also, we try to take care of our people as well as we can, so it's toiletries, it's magazines, it's video recorders, it's coffee makers. We even take up collections at Christmas, to make sure we can send out hundreds and hundreds of pounds of Starbucks Coffee. So out of a thousand flights, I would bet that 98 % of those flights are about logistics!« (Marty 2006: 15).

The concluding report of Council of Europe rapporteur Dick Marty likewise contains few concrete proofs of the participation of European states in the practice of renditions. Certainly, neither the European Parliament nor the Council of Europe are able to force member states to provide information but are dependent on governments' voluntary cooperation (Marty 2006: 8). In the case of Germany, for example, the concluding report praises the cooperation with the German Bundestag, while finding fault with the unsatisfactory cooperation of the German government which consistently hides behind the Parliamentary Monitoring Committee (Parlamentarisches Kontrollgremium or PKG) which meets in secret (Marty 2006: 54). As an example of the German government's lack of interest in transparency in a European framework we may cite the fact that the chair of the PKG, CDU politician Norbert Röttgen, under questioning gave the Council of Europe the public version of an internal committee report which made no mention of the decisive individual cases cited in the media. On the other hand, the PKG sent out to all members of the Bundestag a classified version of a report in order to forestall the setting up of a committee of investigation.

Conclusions

So far it remains unclear what role the German secret service has played as an ally of the USA in the »war against terror« in general and in connection with the CIA's rendition program in particular. To speculate at this

point would be frivolous from an academic standpoint. However, what has emerged is the fact that the public debate about alleged secret prisons and prisoner transports in Germany has considerably weakened transatlantic cooperation in the fight against international terrorism. This is emphasized by legal advisor to US Secretary of State Condoleezza Rice, John Bellinger: »This furor over renditions, and the furor over the flights alone, and the suggestion that flights alone are somehow improper or engaged in illegal activity is undermining intelligence cooperation. Next time, the US may be reluctant to bring people to Europe or exchange information« (Bhatti 2006). However, on both the German and the European sides trust in secret service cooperation with the United States has palpably diminished, so long as it remains unclear from what sources information derives. According to EU Anti-Terror Coordinator Gijs de Vries: »There is clearly in Europe at the moment concern in public opinion about the U.S. balance between fighting terrorism and human rights« (Washington Times 2005). But the USA continues the practice of rendition as a strategy in the »war against terror.« US Secretary of State Rice stressed in a CBS interview in September 2006 on being asked whether secret CIA prisons would be maintained: »The President is going to retain, and I think the American people will want him to retain, all the tools that are available to him within our laws to be able to get information from captured terrorists, to be sure that we can use that information to make the country more secure ... Of course we're going to continue to run intelligence activities when they're needed« (Rice 2006). German Chancellor Angela Merkel, in contrast, foregrounds other priorities in the anti-terror campaign: »Our fight against Islamically motivated terrorism must ... promote ... a political process in which adherence to human rights is the focal point and which strengthens a peaceful decision-making process within the framework of a state under the rule of law« (Merkel 2006).

In quantitative terms the practice of rendition represents rather a marginal component of the »war against terror«. Contrary to many assertions only a fraction of known CIA flights can be considered »prisoner transports« so that they, quantitatively, do not constitute a problem. The qualitative transformation of the rendition program, in contrast, represents a far greater problem – and it could put serious pressure on transatlantic cooperation in the combating of global terrorism. The alleged establishment of so-called secret prisons and the possible application of torture-like methods in order to obtain essential information about Al

Qaeda by the CIA itself – and possibly on European soil – could put the transatlantic value system, in view of the centrality given to the rendition program in his anti-terror policy by President Bush, to a real test: »This program has been, and remains, one of the most vital tools in our war against the terrorists« (Bush 2006). In fact, public support in Germany for the US-led »war against terror« has fallen drastically in recent years and in 2006 amounted to only 47 percent.

Certainly the perception often expressed in the media of the USA as a terrorist bounty hunter, flouting human rights and creating law-free zones on the one hand, and of Europe as unconditional protector of the rule of law and of human rights falls short of the truth. In fact, it appears at least questionable how the example of Germany shows that the governments and secret services of these countries neither knew about the possible practice of rendition on their territory nor have made use of information obtained by this global network. Council of Europe rapporteur Dick Marty even detects a certain complicity on the part of the allies: »It was only through the intentional or grossly negligent collusion of the European partners that this »web« was able to spread also over Europe« (Marty 2006: 65). The one-sided representation of Europe as unsuspecting victim of secret CIA plots must therefore be examined critically. Similarly any form of anti-American exploitation of the issue or speculation in the media and in the public sphere is not very helpful. Ultimately, the fundamental question arises: What does the transatlantic debate on the practice of rendition mean for the future of German–American relations in the »war against terror«?

Experiences from the investigations into the bomb attacks in London and Madrid make clear how important secret service cooperation is in combating global terrorism. With the help of closer cooperation similar attacks in other metropolises in Europe – possibly in Poland and Germany – could be prevented or at least will be prevented in future (Koch 2005: 21). Since the modern form of terrorism operates beyond borders secret service cooperation between Germany and the United States must also take place across borders. However, it must not be without limits. In addition or precisely in the case of secret service cooperation the norms and values of the transatlantic community must be observed. Should these be needlessly infringed in the course of the »war against terror« this will not only put a strain on relations between Warsaw, Berlin and Washington, but above all hinder transatlantic cooperation in combating terrorism at all levels. This is in the interest of neither the USA nor Europe.

The public debate on the rendition program has shown that in democratic societies a state's fight against terrorism is not possible without the necessary democratic legitimization. In combating international terrorism state actors must be led in their actions by adherence to human rights and the principle of proportionality. In the field of tension between freedom and security, the defense of citizens' and human rights as against protection against further terrorist attacks this can sometimes be extremely difficult. But notwithstanding all justified criticism it should not be overlooked that terrorism itself is an infringement of human rights (DGAP 2007). The practice of rendition, as well as the partial toleration of torture threaten the cohesion of the international coalition against terrorism and provide violent extremism with new arguments in the acquisition of new recruits. At the same time, as regards the self-healing power of democracy in the USA it appears extremely improbable that such measures will be maintained over the long term. In the fight against terrorism democracy remains the best answer (Shapiro 2007: 9).

For Germany good relations with the United States are of strategic significance. The USA was always a model for the Federal Republic in its historical development after the Second World War on the basis of democracy, human rights and the rule of law. The »war against terror« confronts these common values and interests with new and fundamental challenges.

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