

## LEGAL ASPECTS OF INTELLIGENCE GATHERING THROUGH EXTRAORDINARY RENDITION OPERATIONS

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**Abstract.** Global threats posed by Al Qaeda and its associated movements have seriously challenged international security and protection of democratic values. Placing intelligence as one of the top priorities during global counterterrorist efforts, the U.S. has led an anti-terrorist coalition while employing offensive intelligence collection, including the so called “extraordinary rendition operations,” conducting them using secret detention. This practice under the International Laws of Armed Conflict has posed serious concerns for European allies. Even more, the European Court for Human Rights has found that Macedonia has violated European convention of Human rights. The article explores whether such European Court for Human Rights’ practice is result of a different legal tradition or whether the gathering intelligence through extraordinary rendition operations is in conflict with general International law. Additionally, the article discusses the reasons behind the recent trend, i.e., that although deeply criticized, according to some reports U.S. practice on extraordinary rendition has so far been supported by more than 50 states around the globe.

**Key words:** intelligence, human rights law, extraordinary rendition operations, European Court for Human Rights

### Introduction

A radical shift in international relations after the Cold War and response to the new threats have opened serious debates, among security and legal scholars and professionals. Using the effects of globalization, non-state actors (media, non-governmental organizations (NGOs), and armed groups) have gained unimagined power in international relations like never before. Using systems and services that they provide (on which we depend), Al Qaeda and its associated movements and individuals (AQAMI) have posed extreme and imminent threats to our security. Soon it became clear that to effectively confront such threats counterterrorist efforts should prioritize intelligence. Nonetheless what also became clear is that gathering intelligence on a global scale is not easy to achieve since it depends on other partner governments’ readiness to implement similar approaches in combating terrorism.

At the same time, although global in nature, the threat is not imminent to all states equally. Thus different threat perceptions resulted in different responses to the threat. Some states, such as U.S., have employed military power to confront AQAMI (Nelson and Sanderson, 2011, pp. 7-14). Invading Afghanistan and Iraq, the U.S. has launched the global war on terror to confront threats posed by modern terrorism. Confronting terrorism with preponderance of military power, the U.S. has approached terrorism as an act of war from the legal point of view. Consequently all operations not just in Afghanistan and Iraq, but elsewhere, including intelligence gathering, shared a similar approach. In this light the U.S. has initiated intelligence gathering through the so-called “extraordinary rendition operations,” conducting them using secret detention. This practice under the International Laws of Armed Conflict has posed serious concerns for European allies.

One reason for this might be that different states have different threat perceptions. Another reason could be a different legal tradition, precisely European human rights tradition. Some states that have cooperated with the US in this practice have faced serious domestic and international criticism and legal consequences. The recent European Court for Human Rights' decision in the case *El Masri vs. Macedonia*, considering such practice and cooperation, is the first case that speaks about such practice from which one could draw conclusions. On the other hand, although deeply criticized according to some reports, U.S. practice on extraordinary rendition has so far been supported from more than 50 states around the globe. To provide some possible answers that could help improve further intelligence cooperation in counterterrorist efforts the article will first briefly explain why intelligence should be given top priority. Then it will explain how coalition counterterrorist operations differ legally and how and to what extent a different legal approach affects intelligence gathering. At the end, the article will briefly provide some answers why regardless of legal considerations and challenges, the U.S. continues to practice extraordinary rendition operations.

### **1. Intelligence as top priority during the global counterterrorist efforts**

The security reality after the Cold War did not match what most scholars and pundits had expected. The emergence of new non-state actors in the age of globalization and the 9/11 events have given new dimension to the concept of security. Employing terrorism Al Qaeda and its associated movements and individuals (AQAMI) have threatened many states' sovereignty in a unique way.

From the legal and operational point of view immediate response to the 9/11 attacks was as an act of war. Furious to topple the threat, anti-terrorist coalition forces have learned that asymmetric warfare does not match the conventional matrix for success. The coalition has dominated the air, ground and sea and had rapidly occupied Afghanistan and Iraq. However, it became clear that the number of deployed troops for protection do not equal safety on the ground. In fact, the practice shows that as the number of deployed troops rise, the risk of loss and mistakes rises too (Davis, 2008). At the same time Al Qaeda grew stronger and created a global network of associated movements and self-radicalized individuals. Furthermore AQAMI have proven to be capable to take the initiative by shifting the fight onto coalition soil. Attacks in Bali (2002), London (2004), Madrid (2005), Mumbai (2009), Moscow (2010), France (2012), and the Balkan Peninsula (2011/2012) attest that these non-state actors' agenda has become global, apocalyptic and critical infrastructure-focused (Hadji-Janev, 2012, pp. 137-151). Explaining why America is at risk Halberstam for example, claims that the Global War on Terror will be a

*...”difficult military-intelligence-security challenge: What we do best they are not vulnerable to. What we do list well they are vulnerable to. What they do best we are to a considerable degree vulnerable to...”* (Halberstam, 2001, p. 497-498).

Thus, it became clear that strategic requirements of countering terrorists in an age of globalization are particularly critical on tactical level. The acumen that professionals involved in this fight must have is maybe best described by Friedman's "generalists". According to him,

“...in an age of globalization success is guaranteed to one who can make connections among disciplines and track ripple effects from one domain, such as genetic engineering, to other domains, such as international organized crime or finance...” (Friedman, 2000, pp. 18-22).

Finding or producing these individuals in large numbers is not an easy job. Furthermore even if we can succeed in this we will still be missing a crucial component, i.e., the willingness of states and other stakeholders to contribute in our goal.

Today many argue that one of the keys to success during global counterterrorist efforts is intelligence (Sims, 2007, pp. 417-450). Although we could not agree more with these views, there is a serious challenge to “operationalize” intelligence for global counterterrorist efforts. To be an effective response to global terrorism requires a global approach, i.e., being able to conduct global intelligence. In reality, synchronization of intelligence efforts from nations that have different national agendas, capabilities, and procedures on intelligence (gathering or sharing) became a concern of operational level officers in multinational forces (Gramer, 1999; Liaropoulos, June 2006). In fact, in a complex operational environment, tactical success in countering modern terrorism depends on other governments’ ability and readiness to adopt similar approaches. Such activities include, among others, effective diplomacy, overseas military support, intelligence liaison with foreign governments, and offensive intelligence gathering and sharing (Forest, 2007, pp. 56-140). All of these issues in the light of the pursuit of intelligence gathering during the global war on terrorism have so far raised many legal considerations.

## **2. Intelligence gathering in confronting global terrorism: a challenge to international legal standards?**

The complexity of asymmetric warfare in confronting global terrorism has largely affected operational success with the quality of intelligence and legitimacy. In this context different legal perspectives among the global counterterrorist coalition have grown stark since the aftermath of 9/11 attacks. Strong disagreement from legal point of view among traditional U.S. and some European alliance emerged on two levels: *ius ad bellum* and *ius in bello*.<sup>1</sup> Consequently this disagreement has reflected on operations on the ground. In addition many European states including Macedonia have faced serious legal challenges (including verdict) and criticism following U.S. legal and operational approach to intelligence gathering (by using the so called “extraordinary rendition”) while cooperating in countering global terrorist threats (Garcia, September 8, 2009, p.1).

Giving that the threats from global terrorism are still present and that effective counterterrorist measures require global, joint and legitimate cooperation among others in intelligence gathering too, the article will explore whether and if so, how different legal traditions among coalition partners affect cooperation in intelligence gathering. Nevertheless, to achieve this one must first understand the legal and operational

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<sup>1</sup> *Ius ad bellum* (right to war) is a set of criteria that are to be consulted before engaging in war or use force on international level. The *ius in bello* refers to the body of law defining the limits of acceptable conducts while already engaged in war.

complexity in the contemporary counter-terrorist operations and how this complexity affects operational and legal aspects of counter-terrorist operations.

*2.1. Differences in operational and legal approach to counterterrorist efforts among the coalition partners*

The immediate response to the 9/11 attacks as an act of war have raised many dilemmas (Goodman and Derek, 2006, p. 2654-2664). Among others was employment of military power under the International Law of Armed Conflict (ILOAC). From operational (doctrinal) and a legal aspect contemporary counterterrorist operations could be seen in three separate groups.

First Major Combat Operations (MCO) conducted in Afghanistan and Iraq (The US Department of Defense, 2006). From an operational point of view these operations equaled total war. From the legal point of view during these operations the International Law of Armed Conflict (ILOAC) applies (Geneva Conventions I-IV, Fisher, 2004, pp. 511-510).

Second, counterterrorist operations after the MCO are over, i.e., post-conflict operations, both in Afghanistan and Iraq. From a doctrinal aspect these operations equal peacekeeping, peace enforcement operations, (NATO Peace support operations, Ch-2) stability and support operations (Global Security Org), or under the new U.S. Joint Concept for Irregular Warfare, the so-called “Irregular Warfare operations-IW” (The U.S. Department of Defense, 2007, pp. 5-8). In practice during these operations so far, different laws had applied. Principles and standards of ILOAC (precisely, customary rules of the Law of Occupation and principles of the IV Geneva Convention) (Fisher, 2004, pp. 512-514), the UN Mandate (drafted by the UN Security Council and troop-contributing countries) (O’Neill, John Terence and Nicholas Rees, 2005) and International Human Rights Law (IHRL) (Naert, 2011, pp. 16-18), were so far guiding legal sources for the post-conflict operations.

Third, counterterrorist operations conducted out of Afghanistan or Iraq (O’Rourke, October 18, 2012, pp. 2-5). These operations are usually conducted by the U.S. with or without coalition partners’ support. From an operational point of view these operations so far were conducted by the U.S. military forces alone, the U.S. intelligence community alone or with or without host government’s consent and support. For U.S. counterterrorist operations outside of Afghanistan or Iraq, host governments have provided law enforcement, military or intelligence community support. The so-called “target killing operations” (drone attacks) and “extraordinary rendition operations” are usually operations that take place outside of Afghanistan and Iraq and are considered as operations under global counterterrorist efforts (O’Rourke, October 18, 2012, pp. 2-5). Legality of target killing operations should be more narrowly connected to the perception of the *right to life* in the context of applicable law. At the same time legality of extraordinary rendition operations should be connected to the due processes guarantees such as: right of free movement, fair trial and treatment under detention in the context of applicable law. The phrase “...*the context of applicable law*...” here is used to point the notion that different bodies of applicable law may apply and that different standards and tenets will give different outcomes from operational and legal perspectives (Sennott, July 12, 2010).

Hence, the above mentioned rights and freedoms do not have the same protections when the counterterrorist operations are conducted under the different standards (i.e., ILOAC vs. IHRL standards) (Bartolini, 2010). In war, when ILOAC applies tension between principles of military necessity and humanity it reflects proportionality and military distinction. For example, proportionality in war does not have the same meaning as in peacetime. In war, due to military necessity, proportionality means that not just the imminent threat should be removed but also the further potential-perceived threat from the enemy should be removed. The principle of distinction (i.e., status of the individual “civilian versus combatant” in general) determines whether or not deadly force will be employed. Detention or capture enemy combatants or civilians should prevent combatants from taking part and protect civilians and legal non-combatants from hostility. This dictates that during these operations, there are no due process guarantees: the individual might not be forewarned about the operation, is not given a chance to defend his innocence, and there is no assessment of his guilt by any impartial body.

Contrary when IHRL applies (i.e., there is no conflict that amounts to trigger the ILOAC-law enforcement paradigm that legally frames the operational environment), operations consider only individual and actual guilt, not the potential one. The individual must be given the above-mentioned due process guarantees. Therefore while conducting counterterrorist operations when ILOAC applies lawfully, there is a great possibility to consider the same operation under the IHRL as unlawful.

General wisdom outside the U.S. is that ILOAC does not apply to the counterterrorist operations outside the operational theatre of Afghanistan (Iraq is not mentioned, since more or less post-conflict operations have ended with stability and transition to the civil authority phase). Accordingly, since there is no UN mandate, and there is no permanent conflict that amounts to a level where under existing legal norms and standards could trigger International Law of Armed Conflict, from the legal point of view guiding principles for these operations should come from IHRL standards. Since there is no official data of the coalition’s involvement in intelligence gathering for target killing operations, our focus will be on the so called “extraordinary rendition operations”. Cooperation in recent extraordinary rendition operations has raised not just serious debates among many European coalition partners, but has ended with concrete verdict against Macedonia for such practice (ECtHR, December 13, 2012). Arguably, the reason for this verdict against Macedonia comes from the European human rights tradition. To see whether the verdict against Macedonia for cooperation on extraordinary rendition operations on its territory represents a legal precedent or a reflection of European human rights tradition that will further affect cooperation in similar intelligence gathering, we will continue our debate on understanding legality on these operations.

## *2.2. European coalition partners’ legal tradition and extraordinary rendition operations for intelligence sharing*

Extraordinary rendition operations in recent practice so far have been conducted to arrest, detain and or interrogate suspect terrorist for intelligence gathering. The U.S. position on all counterterrorist efforts during Bush administration was that U.S. is at war with global terrorism (Lewis and others, 2009). Therefore, according to this position in all counterterrorist operations including extraordinary rendition, ILOAC applies. Although the Obama administration has made a tacit distinction from the term “Global

War on Terror” in specific situations like targeting Osama bin Laden in Pakistan for example, the U.S. took the same position i.e., that ILOAC applies.

Accordingly, it could be assumed that U.S. believes that it has the right to hold suspect individuals on the grounds that it is at war with them. Nonetheless, according to the U.S., these individuals are illegal combatants and thus do not qualify for prisoners of war (POW) status (Dörmann, March 2003). This U.S. position raises serious dilemmas in the context of IHRL application since usually the suspect individual is detained in the third territory i.e., out of the theater of conflict and post-conflict counterterrorist efforts, precisely out of Afghanistan and Iraq. Almost all of the coalition states including U.K. do not share the same approach as U.S. (*Al-Skeini and Others v. Secretary of State for Defence*, 2007). This is understandable since along with International Covenants on Civil and Political Rights (ICPR or Covenant) and on Economic, Social and Cultural Rights, the Convention on the Rights of the Child (CROC), and the Convention Against Torture (CAT), the dominant legal document for European countries in human rights regulation is the European Convention on Human Rights (ECHR).

In the case *El Masri vs. Macedonia*, the applicant (Mr. Khalid El Masri) alleged, in particular, that he had been subjected to a secret rendition operation, namely that agents of the respondent State (Macedonia) had arrested him, held him incommunicado, questioned and ill-treated him, and handed him over at Skopje Airport to CIA agents who had transferred him, on a special CIA-operated flight, to a CIA-run secret detention facility in Afghanistan, where he had been ill-treated for over four months. The alleged ordeal lasted between 31 December 2003 and 29 May 2004, when the applicant returned to Germany (ECtHR, December 13, 2012, p. 1). The European Court for Human Rights (ECtHR), has reviewed relevant domestic law (Macedonian), relevant International law (including case law practice) and public materials, before it ruled against Macedonia. Although in the case against Macedonia the ECtHR has unanimously found that Macedonia violated Khaled El Masri’s rights under the ECHR, broader Courts’ practice confirms that European coalition partners should not cooperate in extraordinary rendition operations outside their territory, when standards and principles of IHRL apply (ECtHR, December 13, 2012, Ch. III). From the text of the ECHR it is not clear if the convention would have application on signatories’ states in foreign territory. Nonetheless, the European case law tradition seems to confirm that whenever there is “effective control of the territory” where military forces and other operatives of state party to the convention operate, they are obliged to apply conventions’ provisions. This is specifically interesting for the states’ agents operating on third-state territory. Along with *El Masri vs. Macedonia*, the ECtHR cases such as *Loizidou vs. Turkey* (ECtHR, 23 March, 1995), *Cyprus vs. Turkey* (ECtHR, 10 May, 2001), and *Issa vs. Turkey*, (ECtHR, 30 May, 2000) clearly attest that European human rights tradition shaped by the ECtHR’s practice seriously contradicts the U.S. approach toward extraordinary rendition operations in the global counterterrorist operations. Thus, unlike the US approach, European human rights practice, shaped by European case law, dictates that once that state agents have effective control of the territory, they need to implement ECHR standards for protection. Any cooperation or active intelligence gathering through such extraordinary rendition operations even on a third state territory will violate the ECHR. Even more the ECtHR in *El Masri vs Macedonia* case, have considered wider IHRL standards beyond European

Human rights legal tradition. This however, indicates that the European legal tradition is not alone in opposing the U.S. approach while applying ILOAC standards.

### 2.3. *International human rights legal standards and rendition operations' practice*

The view that extraordinary rendition operations (including for intelligence gathering) are not legal when applied on a territory out side of the conflict zone is also within compliance of several International Court of Justice cases regarding extraterritorial application of IHRL on occupied territory (ICJ Reports, 2005; ICJ Reports, 2004; ICJ Reports, 1971). Suggesting that states have negative obligation in respect of any extraterritorial activity The Human Rights Committee's position in this regards, as indicated in General Comment 15 to the application of Covenants rights, adopted at the twenty-seventh session (1986),<sup>2</sup> is that:

*"...the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party. This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State Party assigned to an international peace-keeping or peace-enforcement operation."* (Emphasis provided by the author).

Similarly in its General Comment No. 31, The Human rights Committee comments:

*"...Moreover, the article 2 obligation requiring that States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The relevant judicial and administrative authorities should be made aware of the need to ensure compliance with the Covenant obligations in such matters."* (General Comments No. 31, May 26, 2004).

In addition, as Article 31(1) of the Vienna Convention on the Law of Treaties imposes, the concept of "*jurisdiction*" must be interpreted in light of the object and purpose of the particular treaty under which the jurisdiction is invoked, as well as the *travaux préparatoires* (Vienna Convention, 1969).

The ICJ's practice and The International Human Rights Committee's reports confirm the applicability of IHRL in extraterritorial counterterrorist operations, when ILOAC under the existing standards does not apply. Therefore from the legal point of view they

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<sup>2</sup> The Human Rights Committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties

negate the lawfulness of intelligence gathering through extraordinary rendition operations. On the other hand this also confirms that the European human rights tradition is not the single mandatory body of law that contradicts the extraordinary rendition operations on a territory where ILOAC does not apply. Nevertheless, even though existing international standards and principles are against the practice of extraordinary rendition operations in general and intelligence gathering through these operations in specific, these operations have become a global issue.

### **3. Challenges to intelligence gathering through extraordinary rendition operations beyond the law**

Amrith Singh's report on extraordinary rendition mentions 54 countries involved in this practice including Syria and Iran (Singh, 2013). Territories where these operations took place identified in the report span the continents of Africa, Asia, Australia, Europe, and North America. Governments of Afghanistan, Australia, Azerbaijan, Canada, Egypt, Germany, Iran, Libya, Pakistan, Saudi Arabia, Sri Lanka, United Kingdom, Macedonia, Thailand, Romania, Poland, Lithuania and Denmark cooperated in these operations with the US since 2003. The report claims that foreign governments also failed to protect detainees from secret detention and extraordinary rendition on their territories and to conduct effective investigations into agencies and officials who participated in these operations.

Furthermore the state practice of extraordinary rendition operations indicates that the threat perception from the AQAMI is so great that undermines other political disputes. Cooperation with countries such as Libya or Syria is quite usual when the threat is high. Kaddafi and Assad, for example, revealed their agencies' intelligence sharing with the West (Gawdat, 2005; Rudner, 2004, p. 217). Sudanese intelligence officers brag that "*American intelligence considers us to be a friend*" and "*the information we have provided has been very useful to the United States.*" (Silverstein, September 4, 2005). According to Singh, Maher Arar, a Canadian national was abducted from JFK Airport in New York City. He was then "rendered" to Syria for interrogation (Silverstein, September 4, 2005).

That threats from AQAMI are far more complex than they appear and that these challenges have urged even some liberal politicians to shift the balance between public safety and individual rights to the former, may well be described with the President Obama's presidency. When he first came in to office in 2009, President Obama issued an executive order disavowing torture and established a Special Task Force on Interrogation and Transfer policies. However, so far there is nothing that suggests that gathering intelligence and further practice of these operations is abandoned (Burke, February 7, 2013). Although not directly connected to this debate, similar behavior is present in other deeply debated issue of targeted killing operations. Although many expected it to do so, President Barack Obama's administration has not changed the policy on targeted killings either. In fact, as Tara McKelvey argues Obama has ordered a "dramatic increase" in the drone-launched missile strikes against Al-Qaeda and Taliban members in Pakistan (McKelvey, February 13, 2011). Furthermore his nominee of John Brennan for the Director of CIA after his reelection indicates that the US president is clearly aware of the legal challenges but as well of the threats that come from AQAMI. According to some views,

"...Brennan helped the president to understand he could not turn away from the things that need to be done against the terrorists, and then he helped construct the legal and moral framework so that they sat comfortably with the president's commitments..." (McGreal, February 6, 2013).

Brennan's role is important, since back in 2005 and 2008 Brennan stood behind, as he called, *enhanced interrogation* practice through extraordinary rendition operations, claiming that they *have produced more security and saved lives* (McGreal, February 7, 2013). Giving that US is not the only player that has engaged in intelligence gathering while causing moral and legal dilemmas, one could argue that threat perception and the need for self-preservation pose serious challenge to intelligence gathering beyond the law.

Proponents of intelligence gathering in time of imminent danger, i.e., the side with interest to gather information given the stakes and risks involved, will always be ready to keep some of the more extreme options open. Recent practice shows that secret detentions, renditions, and perhaps even harsh interrogations bordering on torture can be imposed in order to get information. Proponents of this practice (the side that needs intelligence) usually justify the approach, with the necessity to survive and or imminent danger (Fain, 2003, pp. 607-608). Calling upon what is considered to be *just*, not *legal* per se, is usually moral argumentation that follows these intrusive methods (Tapper and others, May 2, 2011). To be honest, intrusive measures taken during the periods of highest threat by these states have generally been scaled back after threats have lowered. With these regards, states that require information and feel immediate threat are more concerned with public safety than with individual rights.

From all of the above, it is clear that while engaging in extraordinary rendition operations, many states have violated domestic and international laws and have undermined longstanding human rights protection. Arguably with these practices they have threatened to erode the widely needed support for counterterrorist efforts. Nevertheless, the fact that almost one-quarter of the World's governments have participated in such activities suggests that under urgent threat states are willing to do what they believe is the best for their security. What is not clear from the recent practice is whether supporting governments have utilized similar practice in intelligence gathering or were these just random and extreme cases that will barely happen again. Giving the complexity with which modern terrorism threatens our security, and that violating domestic and international legal standards evaporate our legitimacy in counterterrorist efforts, future operations must consider wider options in gathering intelligence. These options should focus on improving intelligence sharing, analysis, and limiting extreme options only in certain circumstances, after exhausting all other available methods of intelligence gathering (Khalsa, 2004). Some have even argued that complex security environments require the intelligence community to utilize new practical requirements to create the requisite intelligence doctrine, organization, training, and personnel to meet the non-state actors challenge in the twenty-first century (Schultz, 2005, Ch. 1).

## **Conclusion**

Non-state actors like Al Qaeda and its associated movements and individuals have posed global, asymmetric and apocalyptic threats to international security. Intelligence sharing has proven to be among the top priorities that determines success in the global counterterrorist response. Nevertheless the practice of gathering intelligence through extraordinary rendition operations has raised serious legal issues among coalition states.

Facing imminent threat from AQAMI, the U.S. has confronted global terrorism with preponderance of military force around the globe. Thus as we saw from the legal aspect, the U.S. has confronted modern terrorism as an act of war. Applying principles of ILOAC in intelligence gathering, the U.S. has established a practice of so-called extraordinary rendition operations. Following its commitment to cooperate with the U.S. in confronting global terrorism, as many other European coalition partners do, Macedonia was found guilty under the ECtHR jurisdiction.

In *El Masri vs. Macedonia*, ECtHR has found that Macedonia's cooperation in extraordinary rendition operations with the U.S. has not just violated human rights in accordance with the European Human Rights Convention, but also in accordance with the broader International Human Rights Law standards. Furthermore, the analyses of European case law dictates that European states will violate their legal obligation under the European Convention for Human Rights if they acquire intelligence through extraordinary rendition operation on a third territory too. The analyses of the ICJ's practice and The International Human Rights Committee's reports have also confirmed ECtHR' position, and thus showed that U.S. could be also in violation with International Law principles, while gathering intelligence through extraordinary rendition operations.

On the other hand, the analyses of legal and operational practice have shown that regardless of legal considerations under specific circumstances this practice is blooming. In fact although deeply criticized according to some reports, U.S. practice on extraordinary rendition has so far been supported from more than 50 states around the globe. In addition, according to some views, President Obama's inauguration in 2009 sounded promising that the U.S. will abandon this practice. Nevertheless, recent events and analyses point that this is not the case. In fact appointment of experts that have supported such practice in the past to run national intelligence bodies clearly states that while the threat from AQAMI is present, nations that feel immediate and imminence threat will always prioritize public safety rather than individual rights protection.

Finally, regardless of the complex environment, intelligence professionals must be aware of International and constitutional legal requirements and democratic accountability. Therefore they need to focus on alternative measures in seeking accurate, reliable, and timely information. To be effective the intelligence community needs secrecy, informality, and flexibility Extreme methods of intelligence gathering should be limited to a minimum and only applied when there are no other options left.

## References

1. Bahgat, Gawdat. (2005), *Transatlantic Cooperation: Libya's Diplomatic Transformation*, 29, The Fletcher Forum of World Affairs,
2. Bartolini, Giulio. (2010), *General principles of international humanitarian law and their application to interpreters serving in conflict situations*, International Institute of Humanitarian law,
3. Burke, Samuel. (February 7, 2013), *Has the US Outsourced Torture*, CNN, available at: <http://amanpour.blogs.cnn.com/2013/02/07/has-the-u-s-outsourced-torture/>
4. Davis, A. Todd, (2008), *The Global War on Terror, 9/11, Iraq and America crisis in the Middle*, Todd A. Davis,
5. Dörmann, Knut (March 2003), *The Legal Situation of Unlawful/unprivileged combatants*, The International Review of the ICRC,
6. European Court for Human Rights (ECtHR), (December 13, 2012), *El Masri vs. Macedonia*, Grand Chamber, Application 39630/09,
7. (ECtHR), (December 13, 2012), *El Masri vs. Macedonia*, Grand Chamber, Application 39630/09, Procedure,
8. (ECtHR), (December 13, 2012), *El Masri vs. Macedonia*, Grand Chamber, Application 39630/09, Ch-III, Applicable Law, Relevant Domestic Law, Relevant International law
9. (ECtHR), (23 March 1995), *Loizidou v Turkey* (Preliminary Objections), Series A vol. 310. March 1995, *Loizidou v Turkey (Merits)*, (Application No. 15318/89), (1997) 23 EHRR 513, 28 November 1996, and *Loizidou v Turkey (Merits)*, (Application No. 15318/89), (1997) 23 EHRR 513, 28 November,
10. (ECtHR), (10 May 2001), *Cyprus v Turkey* (Application no 25781/94), 78.20,
11. (ECtHR), (30 May 2000), *Issa & ors v Turkey*, Application no 31821/96, Admissibility decision, *Issa & ors v Turkey*, (Merits stage), (2005) 41 EHRR 27 16 November 2004,
12. Fain, Natasha. (2003), *Human Rights Within the United States: The Erosion of Confidence*, 21 Berkeley Journal of International Law,
13. Forest, James J. (2007), *Countering terrorism and insurgency in the 21st century: international perspectives*, Praeger Security International,
14. Friedman, L. Thomas. (2000), *The Lexus and the Olive Tree: Understanding Globalization*, New York: Farrar, Straus and Giroux,
15. Garcia, Michel John. (8 September, 2009), *Rendition: Constraints Imposed by Laws on torture*, Congressional research service, Report for Congress,
16. Gramer, Jr., George K., *Optimizing Intelligence Sharing in a Coalition Environment*, Naval War College, 1999,
17. General Comments No. 31, (May, 26, 2004), *Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, [CCPR/C/21/Rev.1/Add.13.
18. Global Security Organization, *Stability and Support operations*, available at: <http://www.globalsecurity.org/military/ops/saso.htm>,
19. Goodman, Ryan, and Jink, Derek, (2006), *International Law, U.S. War power, and the Global War on Terrorism*, Harvard, Vol. 118 Law Review,
20. Guardian, available at: <http://www.guardian.co.uk/world/2013/feb/05/obama-nomination-john-brennan-cia>,
21. Hadji-Janev, Metodi, (2012), *Managing Consequences of Terrorist Attack in South East Europe*, in: Chaleta D. & Shemella P. (Eds.), "Managing the Consequences of Terrorist Acts - Efficiency and Coordination Challenges",
22. Halberstam, David, (2001), *War in time of Peace*, New York: Simon and Schuster,

23. ICJ Reports (2005), *Armed Activities on the Territory of Congo, Democratic Republic of Congo v. Uganda*, No.116 Judgment of 19 December,
24. ICJ Reports (2004), *Legal Consequences of the Constructions of Wall in the Palestinian Occupied Territory, Advisory Opinion of 9 July*, No.131,
25. ICJ Reports, (1971), *Advisory Opinion on Legal Consequences for States of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276*, 21 June No.16,
26. Lewis, Michael Eric Jensen, Geoffrey Corn, Victor Hansen, Richard Jackson and James Schoettler, (2009), *The War on Terror and the Laws of War: A Military Perspective*, Oxford University Press,
27. Liaropoulos, Andrew N., *A (R)evolution in Intelligence Affairs? In Search of a New Paradigm*, Research Institute for European and American Studies Paper No. 100 14 (June 2006), available at <http://www.isn.ethz.ch/isn/Current-Affairs/Security-Watch/Detail/>?
28. Rudner, Martin. Hunters and Gatherers, (2004), *The Intelligence Coalition Against Islamic Terrorism*, 17 Int'l J. Intelligence & Counterintelligence,
29. McGreal, Chris (February 6, 2013), *The Drone Apologist with the president's ear*, The Guardian
30. \_\_\_\_\_. (February 7, 2013), *Obama's Cheney? "Assassinations Czar"*, John Brennan Brings legacy of Drone War and Torture to CIA Nod, available at: [http://www.democracynow.org/2013/1/7/obamas\\_cheney\\_assassination\\_czar\\_john\\_brennan](http://www.democracynow.org/2013/1/7/obamas_cheney_assassination_czar_john_brennan),
31. McKelvey Tara, (February 13, 2011), *Inside the Killing Machine*, Newsweek,
32. Fisher, Miles P. *Applicability of the Geneva Conventions to Armed Conflict in the War on Terror*, Fordham International Law Journal, Vol.3, Issue 30, 2004,
33. NATO Peace support operations, AJP-3.4.1., 2001,
34. Naert, Frederick. (2011), *The Application of Human Rights and International Humanitarian Law in Drafting EU Missions' Mandates and Rules of Engagement*, Institute for International Law, Working Paper, available at: <http://www.law.kuleuven.be/iir/nl/onderzoek/wp/wp151e.pdf>,
35. Nelson, Rick and Sanderson, M. Thomas, (2011), *A thread Transformed, Al Qaeda and Associate*, Centre for Strategic and International Studies,
36. O'Neill, John Terence and Nicholas Rees, (2005), *United Nations Peacekeeping in the Post-Cold War Era*, New York: Routledge
37. O'Rourke, Ronald. (October 18, 2012), *Navy Irregular Warfare and Counterterrorist operations*, Background and Issues for the Congress, Congressional Research Service Report for Congress,
38. Schultz, H., Richard (2005), *The Era of Armed Groups*, in: Peter Berkowitz (ed.), *The Future of American Intelligence*, Stanford, CA: Hoover Institution Press,
39. Sennott, C.M. (July , 12, 2010), *Petraeus to review the Rules of Engagement*, Global Post, available at: <http://www.globalpost.com/dispatch/afghanistan/100707/petraeus-review-rules-engagement>,
40. Silverstein, Ken, (Sept 4, 2005), *How Kadafi Went from Foe to Ally*, L.A. TIMES, at A1 available at <http://articles.latimes.com/2005/sep/04/world/fg-uslibya4/1.>,
41. Sims, E. Jennifer, (2007), *The Contemporary Challenges Of Counterterrorism Intelligence in: Countering terrorism and insurgency in the 21st century: international perspectives*, edited by James J. F. Forest, Praeger Security International, (2007),

42. Singh, Amrit, (2013) *Globalising Torture – CIA Secret Detention and Extraordinary Rendition*, Open Society Foundations, New York
43. Khalsa, Sundri. (2004), *Forecasting Terrorism: Indicators and Proven Analytic Techniques* Lanham, MD: Scarecrow Press, Inc.,
44. Tapper, Jake, Khan, Huma, Raddatz, Martha and Effron, Lauren, (May 2, 2011), *Osama Bin Laden Operation Ended With Coded Message 'Geronimo-E KIA'*, ABC News,
45. The Geneva Conventions of 1949 and their Additional Protocols, available at:
46. <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp>
47. United Kingdom House of Lords *Al-Skeini and Others v. Secretary of State for Defence*, 2007, The United Kingdom House of Lords,
48. UN, (2005), *Vienna Convention on the Law of Treaties of 1969*, available at: [http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf),
49. US Department of Defense, (2006), *Joint Operation Concept*, Version 2.0,
50. U.S. Department of Defense, (2007), *Joint Operation Concept*, Version 1.0