

## Dick Marty: “Does one have to fight tyranny with the instruments of the tyrants?”

By [Dick Marty](#)

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*After a lot of research into the CIA abductions and the CIA secret flights in Europe, Dick Marty has proven at length, that it is not about the individual cases, because generally, they have become the norm. The President of the Committee on Legal Affairs of the Council of Europe has concluded, in the end, that an organized system acts in public- if not in fact with an active agreement from the European states.*



Dick Marty is a member of the Council of States of the Swiss Federal Assembly and a member of the Council of Europe Parliamentary Assembly, where he is President of the Committee on Legal Affairs and Human Rights. As special rapporteur for the Council of Europe he was asked to give a report on the alleged existence of CIA secret prisons in Europe. In 2007 he received the Swiss Award in the category of politics. On February 1st, 2007 he was invited to the University of Neuchâtel (Switzerland), where he gave a lecture entitled: “Research on Phantom Airplanes and Secret Detention Centres: Does one have to fight tyranny with the instruments of the tyrants”?

When the *Washington Post* revealed at the beginning of November 2005, that agents of the *Central Intelligence Agency* (CIA) had kidnapped Muslims assumed to be terrorists and had detained them in illegal secret prisons, I was unable to imagine what would be in store for me over the following months. That same day the American NGO *Human Rights Watch* published a report, in which similar information was brought to light and substantiated and where we learned that these secret detention centres were in Poland, Romania and other Eastern European countries. As we later learned, the sources for the *Human Rights Watch* came from, amongst others, the CIA themselves.

Parallel to this, the radiostation ABC published a similar message on its internet site. It only

remained online for approximately half an hour because the owner of the transmitter intervened in order to prevent diffusion of this message. The journalist immediately informed his friends about the ban, so that they could retain the message for posterity and so that it would not get lost.

The disclosure by the *Washington Post* and by the *Human Rights Watch* was not really news. The journalist Stephen Grey, for example, had already published articles, in which he talked about “extraordinary renditions” and about “the outsourcing of torture”. At that time, however, there was not really a conscious public awareness.

Naturally there have been media, who have alluded to the CIA abductions and the CIA secret detention centres, however, at the same time one could easily ascertain, without further ado that strong pressure has been brought about to silence them. Later it was revealed that there had been a meeting in the White House with the publishers of the main newspapers, with the probable aim of making them understand, that it would not be good to disseminate information relating to counterterrorism.

Immediately after the details of the existence of secret detention centres in Europe were made known, the Council of Europe reacted: The Parliamentary Assembly requested that a report be made about these abductions, which if proven to be true, would obviously be in contradiction to the European Human Rights Laws.

I would like to remind you, that no other intergovernmental organization has such a specific and strong parliamentary dimension as the Council of Europe. The Parliamentary Assembly is composed of delegations from the different parliaments from each of the 46 member states. These delegations represent the national parliaments, the different parties and must be proportionally representational of both genders as well as all minorities in each country.

As chance would have it, the Commission for legal affairs and human rights of the Parliamentary Assembly met in Paris, two days after the revelations by the *Washington Post* and *Human Rights Watch*, primarily in order to elect a new president. I was nominated and appointed president of the commission.

The first task that I had to tackle, was that of the abductions and the secret detention centres. It was some weeks later on November 25th, 2005, when in Bucharest the Parliamentary Assembly confirmed my mandate with which the Commission had entrusted me, that I first realized how much of a burden it would represent. The press conference, which announced my nomination as a reporter, almost finished in a riot because of the number of journalists present. It was there that the explosive nature of this affair first became clear to me and the fact that my mission had now begun.

The media usually calls me the “investigation agent” for the Council of Europe. In reality I was not and am still not a real investigator. An investigation agent has the chance to summon individuals, to seize documents and to arrest individuals. I had this authority during the fifteen years that I was prosecuting attorney, but am bitterly missing it in this case. I have hereupon decided to operate on the same level as those whom we suspect of maintaining the secret detention centres and therefore to try a kind of “intelligence service” activity.

I hardly, however, had the resources. The secretary of the Commission’s office was indeed, at my disposal, but it was completely overloaded. I finally obtained the support of a 28 year

old Scot and together we contacted independent investigative journalists, NGO's and different countries' "intelligence services" specialists. Thus we began to investigate and put parts of the puzzle together.

At the beginning of 2006, the Parliament of the European Union decided to start a parliamentary investigation into CIA flights and CIA secret detention centres in Europe. Parliament wanted to test Poland, a member of the European Union, and Romania, a candidate for its membership. An ad hoc committee of 46 delegates was formed. The commission had important resources – 13 persons from the secretariat of the European Union worked solely on this case. The committee met each week and their main focus was hearings. Although these hearings took place behind closed doors, it was not possible to guarantee secrecy. I, however, who worked alone, could guarantee that the sources would be kept secret. We thus had completely diverse methodologies and approaches.

In January 2006, I submitted the first interim report and at the beginning of June 2006, the main report. I could receive important assistance from the Milanese prosecuting attorney's office. I knew the concerned prosecuting attorneys personally, who were to investigate the disappearance of Abu Omar, an ex-Imam of the mosque of Milan, of Egyptian origin, who several years ago had received political asylum in Italy. These prosecuting attorneys were successful in proving that Abu Omar had been kidnapped in February 2003, by agents of the American intelligence services and transported in a delivery van to Aviano, the Italian Nato military base. From Aviano he was brought to Ramstein, and in so doing flew over Switzerland. He was then transferred from Ramstein to Cairo, where he was handed over to the Egyptian authorities, who tortured him.

I would like to underline here, the importance of the independence of the law. The Milanese prosecuting attorney's office had instituted proceedings, despite the open animosity of the Berlusconi government, who tried to sabotage the investigation. Thanks to the outstanding work of the prosecuting attorneys and certain Milanese police departments, which led an investigation of noteworthy quality, 25 CIA agents involved in the abduction of the Imam, were identified. Thus, the prosecuting attorney's office of Milan was able to issue an international arrest warrant for 22 of them.

The Milanese prosecuting attorneys put all investigative documents at my disposal. During one week I read them meticulously. I became convinced that I was on the correct path and that we were under the effect of a highly developed logistics system. It was impossible that such things could exist without the co-operation of the local authorities one way or another, or that the Pentagon and the CIA could be the only services involved in these "extraordinary renditions".

What does the term "extraordinary renditions" used by the CIA mean? In practice it means to hold captured individuals suspected of having connections to terrorism, without scrutinizing whether they having been legally accused and then transferring them to the governments of their country of origin, where they are subjected to brutal interrogations.

The aim of these secret "renditions" is to extort from the captured individuals information by means of torture and by means of threats, so that they will collaborate with the intelligence services and will practically become infiltrate agents. CIA agents have probably kept more than one hundred individuals imprisoned on the basis of these terms of "renditions". We do not have precise data at the current time.

When the public heard about the system of the “extraordinary renditions” there were active debates in the United States. The US-Administration then tried, through the use of laws, to justify the “extraordinary renditions”. The lawyer, who developed the theory of this global system, is the current head of the United States Department of Justice, Roberto Gonzales, who in the American judicial system and is also the US Attorney-General.

These “renditions” – and that was crystal clear to me from the beginning – pre-suppose logistics as the existence of interim detention centres. It turned out later that many of the detained individuals, who had not been transferred to their country of origin were held in secret detention centres like Bagram in Afghanistan, Abu Ghraib in Baghdad or Guantánamo.

On December 5th, 2005 Mrs. Rice with her justification of the “extraordinary renditions” and the existence of Guantánamo, gave us an important clue when she explained that *“the United States would not have violated the sovereignty of the European countries”*. I think that Mrs. Rice, in this case, told the truth. With these words she revealed that what had been exposed about the secret prisons in different European countries had happened with the co-operation of the governments of these involved countries. In this respect, there had been no violation of sovereignty on the part of the United States. Mrs. Rice wanted to inform Europeans, who criticized the United States: *“Don’t suppose that you are too intelligent to have used the system of extraordinary renditions yourselves at different times”*.

Mrs. Rice referred, with that, to the case of the terrorist Carlos, who had been abducted in the Sudan by the French intelligence services. The big difference, which Mrs. Rice did not mention then, is that Carlos had been transferred to the French judicial system and that he received a fair trial and that he had the right to take advantage of the European Human Rights Court of Justice in Strasbourg. This is the fundamental difference. One can defend this kind of “rendition”, if the sought-after individuals are in countries, which either do not co-operate with the judiciary or which are not able to arrest and transfer sought-after individuals; if the goal consists of handing over the abducted individuals to the justice system.

In Poland and in Romania, in particular, we were confronted with a great deal of difficulty regarding our investigations. The people we met in these countries, were thoroughly terrorized by the idea that their statements could harm their country. Especially in Romania, where in the meantime, it had become a question of national interest to say nothing of how it might jeopardize their request for application for membership in the European Union.

The role of countries like Switzerland in co-operation with CIA abductions turned out to be trivial; even when important questions were raised. The fact that countries such as Sweden are involved is more disturbing. The Swedish police spontaneously handed over to CIA agents, two Egyptians who had received asylum. There are testimonies from the police, which confirm that these Egyptians had already been ill-treated at the airport by the CIA agents. They were then brought to Cairo and were subjected to the same torture as Imam Abu Omar. Sweden was condemned by the UN- Commission against Torture for this matter.

Also other countries, like Bosnia, handed over individuals spontaneously. When we asked the Bosnian authorities, they admitted the fact and regretted it.

Canada also collaborated actively with illegal CIA-abductions. This country, by the way,

recently paid a compensation of 10 million dollars to an individual of Canadian origin, who had been detained for several years in Guantánamo, although he was not accused of anything. In the USA, released individuals have received neither an apology, nor any compensation. At present there are 500 attorneys in the USA, who are working together to defend the interests of these abducted individuals. This will lead to a series of judicial actions against the government of the United States of America.

This summary of the facts requires some reflection.

The government of the United States made a choice, which is based on the following considerations: Terrorism represents such a serious threat to our country that we must consider ourselves, at present, to be at war. In this war our judicial system is completely unable to fight terrorism. Therefore no law, therefore Guantánamo, therefore secret detention centres, therefore no trials and nothing at all. We must obtain information at any price.

As soon as one speaks about “war”, it is necessary to speak about martial law. And if one speaks about martial law, one speaks also about the Geneva Convention; and if one speaks about the Geneva Convention, that means one must report the names of all prisoners to the *ICRC* (International Committee of the Red Cross) and must permit inspections.

Still, the United States takes the view that the Geneva Convention is an inadequate instrument in dealing with terrorism. They have selected a third way, namely that of arbitrariness – neither of justice nor of international law. This way of arbitrariness is certainly not applicable on American soil, nor can it be applied to American citizens. Thus a sort of legal apartheid system has been introduced, a model that is certainly completely foreign to our understanding and to our judicial tradition. Nevertheless, European countries have tacitly accepted this system.

Eventually the facts show us that we are right. Most European governments have co-operated actively with the US, in one way or another, in order to adopt this doctrine of “extraordinary renditions”. By its implementation they have participated in everything that is connected to it, whether it is by the fact that they have tolerated it or by the fact that they knew about it and did not protest against it. Admittedly there have been some more or less polite protests against Guantánamo. But as far as the “extraordinary renditions”, the secret detentions and the use of torture were concerned, they acted as if they knew nothing.

When I heard about the Italian investigation documents, I got in contact with my former colleague Armando Spataro, the deputy prosecutor of Milan and the investigator in the abduction case of Abu Omar. I shared with him my conviction that all this could have only happened with the participation of the police or the Italian secret service. This was also his opinion.

At the same time, the head of the Italian military secret service, Mr. Nicola Pollari made a statement in front of the Parliamentary Assembly of the European Parliament in Brussels in which he denied any collaboration in this affair and that he had never heard anything about it nor had ever taken part in this kind of activity.

What is more is to take note today that Mr. Pollari has been recalled by the new government, that he has to appear in court in Milan, because it has been proven that the



Italian secret service, of which he was the head, had co-operated closely with CIA secret agents in the abduction of Abu Omar. Today it has been established that the first person who approached Abou Omar, who led him to understand that it was a “police” matter and who asked to “see his documents”, was in fact an Italian intelligence service officer, who confessed this himself. A few seconds later, Omar was loaded into a van and handed over to CIA agents.

The participation in the machinations of the CIA intelligence services was very active, as one could also observe in other countries.

What really impressed me during this investigation – perhaps I was too naive and still am – was to what degree European governments lied, either actively or by omission and continued to lie. They lied or at any rate refused to tell the truth while persuading themselves that this was justified: This is important in the interest of the state or, This is a state secret and therefore not only can we lie, but we ought to lie!

Yesterday the public prosecutor’s office in Munich issued 13 arrest warrants for the CIA secret agents, accused of kidnapping Khaled El-Masri, a German citizen of Lebanese origin. When I met Khaled El-Masri, nobody in Germany believed him yet. He had been abducted to Macedonia and transferred to Kabul, where he was subjected to several months of torture. He was returned to Europe and released somewhere in Albania and finally after a long struggle, it was proven that Khaled El-Masri had told the truth, that he had been abducted by CIA secret agents, certainly with the co-operation of the German agents.

When I met the German public prosecutor, I conveyed to him the information that we had received in Macedonia. Yesterday Munich’s public prosecutor’s office announced that thanks to the co-operation and the information collected by the Spanish police, to the public prosecutor’s office in Milan and to the Council of Europe’s reporter, Dick Marty, he was successfully able to track the 13 CIA agents.

I do not say this to praise myself, but simply to show that if a person, who works with only one assistant can produce results, we could have gone a lot further in establishing the truth if there were just a little bit of will on the part of the European governments, including Switzerland.

It is my conviction – I cannot prove it yet – that the European governments have signed secret agreements with the United States, probably following the strong emotions triggered by the events of September 11th, 2001. That could explain the silence, though it doesn’t excuse it.

Switzerland is not excluded from criticism. The airplanes, which belong to the US government, need an annual flight permit. CIA airplanes move all over Europe. The majority of these flights are used to transport logistical material from the CIA, which has offices all over the world. The Federal Authorities of the Swiss Confederation renewed this flight licence, although they knew that CIA airplanes had obviously abused this licence by having transported Abu Omar, abducted in Milan, through Swiss airspace. This constitutes a criminal action and it is the responsibility of the Prosecuting Authorities in our country to find and punish the culprits.

When the Federal Council was asked about the number of flights and landings of CIA airplanes in Switzerland, our authorities answered: three flights. One hour after this

confession, *Amnesty International* proved that it was four flights. Today we know that there have been at least 48 flights. We would have appreciated it, if the Federal Council had given more precise information about the number of flights!

As previously mentioned, the transit of airplanes, which transport abducted individuals, is a crime, which falls under the jurisdiction of the Swiss Prosecuting Authorities. It took a very long time for the Office of the Attorney General of Switzerland to decide to open an investigation, although the Italian magistrates had documents which proved overwhelmingly, that the airplane, which transported Abu Omar, had flown over Switzerland. When we inquired at the Federal Office of Civil Aviation: *"Did this or that airplane fly over Switzerland on the 13th of February 2003?"* the prompt answer was: *"Yes, Sir, twice! In the morning from Ramstein to Aviano and in the afternoon from Aviano to Ramstein."* It was the same destination and the same time-schedule as in the Italian police documents.

We think, therefore that there have almost certainly been secret agreements; but there have also been corresponding policies and interests, which have been implemented, in contradiction to our values and political principles. I am perfectly aware of the fact that it is the role of a government to protect its country's interests and that there can be conflict situations. Personally, however, I would have preferred it, if one had spoken openly, instead of lying to us: We cannot be on bad terms with the USA, because we have strong interests with them.

For the Federal Swiss Authorities all this means that there has been a lack of political will to find out the truth. I am convinced today – I'm repeating it – that there have been secret, formal or informal agreements between the USA and Switzerland, as with other European countries. And if these agreements were only struck at the intelligence service's level, it would be even more disturbing.

In the last days we heard from the press that the Office of the Attorney General of Switzerland has taken steps directly or through the police department to have investigations in Guantánamo. The Federal Swiss Authorities have given lists of names and photos of Muslims who were detained in Switzerland to the authorities of the USA in order to obtain information about the prisoners in Guantánamo. This means in fact an acceptance of the extortion of information under torture. I think this is simply scandalous. On the one hand our Foreign Minister, Mrs. Calmy Rey says amicably to Mrs. Condoleezza Rice that the prison of Guantánamo is unacceptable, that it must be closed and that it is against international law. On the other hand, our Federal Authorities, by making investigations into Guantánamo, legitimize this kind of structure, thereby supporting the torture. At the same time they know exactly that possible evidence obtained under torture or in secret detention centres, would not be acceptable in any European court.

During this period of investigation, I often felt very lonely. But, an irony of fate is that today I can express my thanks to President Bush, for his indirect important support when, on the 6th of September, 2006, he finally admitted the existence of these secret detention centres. Consequently my report about CIA abductions and CIA flights attained particular significance.

Another encouraging and positive element is what just occurred in Germany, where the 13 agents of the American espionage service, who abducted Khaled El-Masri, will be legally prosecuted. In addition to this, there is the trial in Milan as well as the steps taken by the Spanish legal authorities, who have requested access to all documents from the Spanish

secret services regarding CIA airplanes. In short, I believe that the dynamics of truth has just been put into motion.

I was also pleasantly surprised by the quality of some NGOs in the USA, as well as by the dynamics expressed by some circles of civil society. If certain facts have emerged, then it's happened partly thanks to these NGOs.

It is of substantial importance to have an independent press. We saw to what degree the media is influenced by those in power. There was another, revealing example: the conditioning of the public opinion, by the media, in favour of the war in Iraq. There cannot be real democracy without a really independent press, politically as well as economically.

One element of great importance is the independence of the judiciary. And when I say the judiciary, I mean in particular the Office of the Attorney-General. If Italy was able to find the truth in this affair, it is due to the independence of the Office of the Attorney-General, who could act despite the animosity of the political power. In the Italian system the public prosecutor's office is regarded, in every respect, as an independent judicial authority and the police, which co-operate with the prosecuting attorney's office, is subject to the same independence.

I'm insisting on this point, because in Switzerland, the present head of the Federal Department of Justice and Police would alone like to exercise control over the Office of the Attorney-General of Switzerland. This is occurring in the middle of complete apathy amongst the political class, which gives the impression that it is not interested in the problems of the judiciary. I find that this is very dangerous and that one should absolutely react.

Can the fight against terrorism justify these practices?

Every day I meet people who say: *"Oh, terrorism is so dangerous. We must accept torture, so that lives can be saved."* I find these kinds of considerations wrong and extremely dangerous.

Terrorists are certainly dangerous individuals, because their aim consists of destroying, by all means, our democratic system and western values. It is nevertheless shocking that we fight these terrorists ourselves by renouncing the fundamental institutions of our democratic system; our judicial system; the fundamental principle of Human Rights and the guarantee of a fair trial. By behaving in such a way, we indirectly legitimize the fight of these people, who today in the face of the violations, are convinced that the system is brutal, illegal and uses torture. Above all, these illegal actions could lead to a sympathetic movement for the culprits of terrorist actions.

When I co-operated with the head of the Italian anti-terrorism unit, General Carlo Alberto dalla Chiesa, he said to me: *"Terrorists are madmen, but they are not numerous; they only become dangerous when a movement of sympathy for them develops; this encourages, motivates and stimulates them."* He illustrated his words with the following image: *"Sympathy for terrorism is like oxygen for fire."* I am convinced that this is in accordance with the truth.

What also shocked me during my mission, was the realization that in the context of this war against terrorism, there is no strategy at all.

The USA said: no judiciary, no Geneva Convention, we are giving the intelligence services



and the Pentagon free rein.

There has never been a debate between the USA and Europe about the ways and means to counter terrorism. There has also never been a debate within of Europe about a real strategy.

Besides, as far as I know, there is no international legal definition with regards to terrorism. There are conventions which talk about terrorism, but there is no real definition of terrorism. I think we should probably change or adapt some of the mechanisms of the present system concerning pursuit by the police and judicial prosecutions. I maintain that democracy and the judicial authorities have the means to cope with the threat which terrorism represents. I believe that there are still other threats, which are just as dangerous as terrorism. I think corruption, for example, is a world-wide evil that causes immeasurable disasters.

The real instrument in the fight against terrorism lies at the political level. I am really convinced that we will not solve the Palestinian problem as long as we do not offer a political solution and a life of dignity for these hundreds of thousands of Palestinians who were born there, have grown up there, and have seen their family members die in the refugee camps and who have lost all hope, leading, unfortunately, to more human beings, who will blow themselves up, like this grandmother recently in Gaza.

How can one imagine that there will be no more terrorists, as long as there are wars that are based on lies?

What worried me most about this affair and shocked me deeply, is the indifference. How many people said to me: *"Why do you do all that, they are just terrorists! The Americans are right."* And they add: *"They are, after all, only Muslims"*.

What a kind of confusion! I believe that we are on our way to commit a historical error by criminalizing Islam. We are forcing the moderate Islamic movement towards extremism; I am afraid that we will pay a very high price for this mistake.

*Does one have to fight tyranny with the instruments of the tyrants?* That is the title, which I wanted to give to this conference and it will be my conclusion. This phrase is not my own. I found it in a judgment in a terrorism case of the Supreme Court of the United States, uttered by judge Sandra Day O'Connor: *"If our country wants to remain faithful to our values, which are symbolized by our flag, we cannot fight tyranny with the instruments of the tyrants"*.

*Recording and editing by: Silvia Cattori, in coordination with Dick Marty.*

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