

# THE ABU OMAR CASE AND “EXTRAORDINARY RENDITION”

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*ABSTRACT: In 2003 Hassan Mustafa Osama Nasr (known as Abu Omar), an Egyptian national with a recognised refugee status in Italy, was been illegally arrested by CIA agents operating on Italian territory. After the abduction he was been transferred to Egypt where he was interrogated and tortured for more than one year. The story of the Milan Imam is one of the several cases of “extraordinary renditions” implemented by the CIA in cooperation with both European and Middle-Eastern states in order to overwhelm the al-Qaeda organisation. This article analyses the particular vicissitude of Abu Omar, considered as a case study, and to face different issues linked to the more general phenomenon of extra-legal renditions thought as a fundamental element of US counter-terrorism strategies.*

**KEYWORDS:** extra-legal detention, covert action, torture, counter-terrorism, CIA

## INTRODUCTION

The story of Abu Omar is one of many cases which the Commission of Inquiry – headed by Dick Marty (a senator within the Parliamentary Assembly of the Council of Europe) – has investigated in relation to the “extraordinary rendition” programme implemented by the CIA as a counter-measure against the al-Qaeda organisation. The programme consists of secret and illegal arrests made by the police or by intelligence agents of both European and Middle-Eastern countries that cooperate with the US handing over individuals suspected of being involved in terrorist activities to the CIA. After their “arrest,” suspects are sent to states in which the use of torture is common such as Egypt, Morocco, Syria, Jordan, Uzbekistan, Somalia, Ethiopia.<sup>1</sup> The practice of rendition, intensified over the course of just a few years, is one of the decisive and determining elements of the counter-terrorism strategy planned

and approved by the Bush Administration in the aftermath of the 11 September 2001 attacks.

Abu Omar's case, has encouraged investigations into the different aspects which compose rendition notably: the size and the type of relational network that supports the practice; the programme start time; rules of engagement and the absence of legal restrictions; the subjects involved in the plan). Besides enhancing an overall understanding of what the general intention of extraordinary rendition is, this analysis has made it possible to grasp the reasons behind the operational choices and policies of the US government in facing the al Qaeda threat.

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This work seeks answers to several theoretical questions such as: what are the factors that determine(d) this form of response – based on the use of force and the use of secret prisons – in relation to the type of threat? Were the decisions of the Bush Administration unprecedented? Do they represent a break with the previous Administration line or are they in continuity with it? In case of a change in foreign policy, does the current US Government headed by Obama possess real opportunities to manage the bizarre relationships that have been built with the implementation of the rendition programme? Is the US position in relation to the terrorist phenomenon and to the matters of international policy any different from the position of European countries? Is it possible to glimpse an alternative in the fight against international terrorism other than the one embodied by extraordinary rendition? To what extent are covert actions and intelligence operations effective? Addressing these issues is a good way to grasp and to reflect on the objective implications and on the actual consequences determined by the strategic decisions of the US. Furthermore, this study is meant to encourage debate and a possible rethinking of international terrorism and national responses to it.

## THE PLAN

Prior to delving into the specifics of the Abu Omar case, this work first presents a brief, but necessary, history of extraordinary rendition.

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In the aftermath of the 1993 attacks on the *World Trade Center* and the 1998 bombing of US embassies in Kenya and Tanzania, (then) President Clinton began to develop a counter-terrorism strategy that would be effective enough to defeat a comprehensive enemy, such as al Qaeda. This meant tackling organisations conceived as being composed of many cells scattered among various countries and operating with a decisive role in preparing terrorist attacks. In 1995, when the *US National Security Council* expressed serious concerns about the possibility that Osama bin Laden might be acquiring weapons of mass destruction, the Clinton Administration developed a programme of rendition in order to destroy the terrorist cells and to arrest the leaders of al Qaeda. However, like all policies related to national security, this rendition programme was secret; the first public announcement was made in 2004 by Michael Scheuer, a former CIA agent and a counter-terrorism expert who had worked on the programme since 1996. According to Scheuer, who was in charge of the *Islamic-militant Unit* of the CIA, this strategy against al Qaeda (named *The Plan*) was based on a dense network of the secret services of different countries. Asking for the collaboration of third countries to apply their own police forces and make sure that boundaries were not an obstacle for US agents was essential in order to capture individuals who could be located

anywhere in the world. It was not by chance that in 2002 the former director of the CIA, George Tenet, said:

[w]e worked with numerous European governments, such as the Italians, Germans, French, and British to identify and shatter terrorist groups and plans against American and local interests in Europe.

However, transnational cooperation was not limited to research and the identification of individuals or groups suspected of involvement in terrorist activities. It also consisted of training the agents, in the provision of new intelligence technologies and in the planning of capture operations.

In order to make the programme functional and effective, the US had to find countries willing to handle captured suspects as they could not be legally brought into the US. For instance, in 1995 the US intelligence brought the programme to Egypt, a country (under Mubarak) known for brutally torturing prisoners, particularly those deemed threats to national security. Mubarak willingly accepted US proposals because, following the assassination of Anwar Sadat by the hands of Islamic extremists, he was determined to counter Islamist agendas. Egypt had thus become a key element of the plan. This secret link resulted in various covert actions, such as the kidnapping of Talaat Fouad Qassem in Croatia. He was sought after by Egyptian agents on suspicion of being the murderer of Sadat. There are many other cases of secret renditions organised by the CIA which occurred in the second half of the 1990's with Egypt being the final destination. These covert actions were implemented by the US intelligence in collaboration with secret services of other countries, such as Albania. Although the US was legally obliged to provide governmental assurances to third countries about the fact that the rendered people were not subjected to torture, no such documents exist.

Despite the controversy of some aspects of the cases noted above, the most prominent legal authorities, such as the Supreme Court, have considered the rendition programme used during the Nineties as part of a clear legal framework. In fact The Plan, in its origins, was designed and labelled as "rendition to justice." Operations were then considered legitimate since they have always been supported by the idea that each state had the right to arrest dangerous criminals, to bring them to justice and to prosecute them. Besides

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Moreover, it is important to remember that the plan promoted by the Clinton Administration was limited by certain legal parameters and by pre-established rules. As highlighted by the Scheuer, formal prerequisites had originally been set to trigger each operation of rendition: (a) the start of an “exceptional trial” against the suspect for which evidence of terrorist activities is carried out in his country of origin; (b) composing a dossier (or profile) on the suspect drawn up by the CIA and evaluated by a US legal adviser; (c) cooperation with another country capture the suspect and finding a place available for detention.<sup>7</sup> Therefore, each case had to be singularly evaluated in order to allow only the necessary operations and to avoid indiscriminate and unjustified arrests. In fact these covert actions could take place only *after* the Congressional approval which was crucial to ensure legality and avoid the potential arbitrary arrest. In US law, so-called *covert actions* are governed by strict operating and legal rules. Indeed, in 1980 two Congressional Intelligence Committees were established to examine (and eventually to allow) each covert operation. Additionally, the US President, for national security reasons, may set up special Committees, known as the “Gang of Eight,” composed a chairman and minority members of the Intelligence Committees, the speaker and minority leader of the House (of Representatives), and majority and minority leaders of the Senate.<sup>8</sup>

During the Clinton Administration, such procedures actually limited the implementation of actions deemed to be *extraordinary rendition*. In fact, as highlighted by Tenet, between 1995 and 2001 the CIA was involved in the extraction and transfer to a third country of 70 individuals who were not judged in a formal trial of extradition.<sup>9</sup>

After the 9/11 terrorist attacks the plan was taken up and adapted to the political objectives of the Bush Administration, and the number of renditions increased drastically reaching into hundreds of cases.<sup>10</sup> This change was due to the Bush Administration turning the programme into one of the main tools in its “global war on terrorism.” 9/11 prompted the US to reassess the features and the type of the threat posed by alQaeda and to develop a new paradigm for dealing with it. The latter was been perceived as an exceptional danger, that must be challenged as a matter of great urgency. Consequently, the legislative measures adopted in the months following 9/11 were based on the need to restrict civil rights and liberties and

to tighten security measures. In this way, according to the Bush Administration, it was possible to collect information and arrest suspected terrorists quickly and without undue impediments. It's not by chance that part of the *PATRIOT Act* (entered into force 25 October 2001) provide for measures that increased the powers of the police and of the intelligence enabling them to act without seeking the permission of the judiciary or other competent authority. These rules have also deeply limited civil liberties.<sup>11</sup> Also the management of the plan was entrusted to the CIA. In contrast, in the mid-1990's, when this programme was first launched, renditions were managed and led by the US Federal Bureau of Investigation (FBI) while the CIA only played supportive roles in logistics and tactics.

This change of leadership was formalised on 17 September 2001, when Bush signed a secret document that authorised the CIA to set up a specific paramilitary unit responsible for operating around the globe to search for, capture, detain and even kill individuals deemed terrorists. This document also provided a set of agreements to be concluded with eight territories and states – Thailand, Diego Garcia Island, Afghanistan and some countries of Eastern Europe – on the territory of which would be installed secret prisons run by the CIA. Moreover, to strike at the leadership of al Qaeda, under the direction of (then) Defence Secretary Donald Rumsfeld a “Special-Access Programme” was planned to allow intelligence agents and some military *élite* of the (Navy Seals and Delta Force) to use extraordinary means: to kidnap and torture terror suspects.<sup>13</sup>

These documents – and decisions – resulted in a profound change in the plan both for its size – extension of the relational network and number of renditions – and for the type of operations. The CIA's methodology was very different from the FBI's which was said to be “slow-but-sure”<sup>14</sup> as it complies with legal procedures. Unlike FBI agents, CIA operatives have little legal training and less experience in taking custody of suspects with procedures that may be admitted in court. As a result, the rendition plan was strengthened by US intelligence with the use of techniques of the programme known as SERE (Survival, Evasion, Resistance, Escape) created at the end of the Korean War in order to train experts in infiltration, surveillance, spying, recruiting spies and resistance in case of capture, as well as coercive interrogation and torture.<sup>15</sup> Besides, the CIA has recruited soldiers belonging to the Army's Special Forces and

specifically trained to use torture to carry out *extraordinary rendition*. Several prisoners have testified that they were indeed subject to violence such as: waterboarding; long-time standing or stress positions up to 48 hours; sleep deprivation for days; sensory overstimulation with the use of loud noises and loud music; drastic reduction of food and water; exposure to extreme temperatures; hooding for hours or even for a few days to cause confusion and prevent regular breathing; beatings with blunt objects, such as pistols or rifles; compulsion to remain naked for long periods in dark cells or in public overwhelmed by the shouts of derision of the guards; threats of death or of retaliation on relatives or the transfer to the detention center at Guantánamo Bay.<sup>16</sup> As revealed by an investigation conducted by the Council of Europe and led by Marty, the final aim of such violence is to generate deep humiliation in the detainees. The physical brutalities inflicted combined with the environmental conditions of total isolation or with the coercion to take behaviours degrading and disrespectful of human dignity are functional to degrade the prisoners to mere objects, to deprive them of their value as human beings and so they can strike deep within.<sup>17</sup> The coercive interrogations and torture, systematically used for the renditions run by the CIA, had other purposes than the mere collection of information for intelligence. In fact, information obtained in conditions of total dependence of prisoners who are forced by violence to bend to the will of the questioners and to confess everything to be free of pain, are hardly reliable.

The systematic use of such techniques was politically endorsed by the Bush Administration. Consider that the legal advisors of the Government and military officials had drafted different *Memos* discussing the juridical *status* of terror suspects taken into custody, whether or not apply the Third Geneva Convention to the so-called “unlawful enemy combatants” and the definition of term “torture” to determine which kind of interrogations and behaviors would be admissible.<sup>18</sup> However, it must be underlined that the use of coercion and violence, as well as the choice to put the terror suspects in never-ending legislative limbo were due to reasons both political and operational: the CIA could manage detention centres without specific controls; and US secret services lacked experience in managing and administration of imprisonments. Some former intelligence agents, like Tyler Drumheller and Scheuer, have highlighted

that, though a practical perspective, entrusting the CIA works usually conducted by police forces has been counterproductive.<sup>19</sup> In fact US secret service agents had little legal training for the operations of arrest and imprisonment. Managing problems, a lack of controls, and the idea that coercive methods were most effective to strike back at terrorism, were some elements that caused the spread of the arbitrary behaviours and drastically increased extra-legal arrests.

It is important to remember that the wide-spread use of extraordinary rendition was determined by a precise political will of the US government and it was updated thanks to the support and cooperation of different states of the world such as: by Egypt, Jordan, Syria, Morocco, Uzbekistan. Additionally, it is essential to recall countries like Afghanistan, Thailand, and some states in Eastern Europe which offered to house secret prisons directly run by the CIA. Finally, the support of European states to identify, arrest, and in some cases (as Romania and Poland) holding alleged terrorists before being transferred in several countries of North Africa, was an essential ingredient in the extraordinary rendition programme.<sup>20</sup> To specify the nature of the relationship between US intelligence and many European states, the case of France – officially opposed to US foreign policy and the counter-terrorism strategies adopted by the Bush Government. In 2002, French secret services and the CIA cooperated to establish (in Paris) a *joint centre* (code-named “Alliance Base”) where intelligence agents of different nationalities worked together: German, UK, Canada, Australia, France and the US.<sup>21</sup> This centre has several functions such as: exchanging intelligence information, performing analysis of terrorist activities and the coordination of multinational counter-terrorist operations. The need to cooperate worldwide and to use the territory and airspace of different states to collect, transfer or detain people suspected of terrorism led to the construction of a real relational web. This is composed not only of secret services, but also of different sectors of society and by several private subjects. Beyond military institutions and intelligence apparatuses, a wide range of Governmental Departments (such as persons in charge of Infrastructure and transport) and the private partners (banks, airlines) have taken part in the programme.<sup>22</sup> Hence the need to operate both locally and internationally led the US, on one hand, to reinforce relations with

several social sectors of each country involved in the rendition plan and, on the other hand, to start close collaboration with different regimes and the conclusion of secret agreements.

Such a programme and tight-knit relations have been a feature of the US-led war against terror for over a decade now, altered only slightly with the inauguration of President Obama who, after a mere two days in office, issued three executive orders of significance.<sup>23</sup> First, he ordered to closure of the detention centre at Guantánamo Bay (Cuba), that was initially planned to shut by the end of 2009, and to cancel all the detention building run by the CIA. Secondly, in order to ensure national security and justice, Obama reconsidered the legal and objective basis related to the detention of suspected terrorists still in US custody. From this perspective, the value of the Article three of the Geneva Convention regarding the treatment of war prisoners and the value of the *habeas corpus* of each human being has been restored. Additionally, several limits to the interrogation practices permitted by Obama's Government were developed. Finally, the intention to organise the release of prisoners of the "war on terror" considered as non-threats was initiated. According to the current Administration, the last purpose should be implemented following a strategy based on diplomatic cooperation with countries willing to accept some subjects: such as Italy, France and the UK.

Obama also ordered the Secretary of Defense and Congress to work together to make several changes in procedural rules to govern the legal process vis-a-vis suspected terrorists. This mainly refers to the inadmissibility (in a trial) of statements obtained through cruel and violent interrogation methods, to the need to ensure an adequate and independent defense of the accused and to the importance of providing protection to witnesses. All these aspects, on the contrary, were distinctive features of the military trials as established by the *Military Commissions Act* drawn up by the Bush Administration.<sup>24</sup>

Obama's Administration embarked on several changes and declared it's willingness to promote a comprehensive counter-terrorism strategy aimed at striking the terror networks linked to alQaeda and, importantly, to the Taliban. This new operational approach is based on the resumption of effective self-defense capabilities and management responsibilities by the Afghan and Pakistani

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Governments, as well as the diplomatic efforts of the international community.<sup>25</sup> Despite such moves Obama's Administration has not altogether omitted extraordinary renditions from the policy toolbox. However, it does attempt to use such tactics in its originally intended form and within the legal boundaries set up under Clinton.

The above section sought to unveil the short, but dense, history of extraordinary rendition as a counter-terrorism tool for consecutive US Administrations. However, without delving deeper into the subject matter, this work would be superficial. Hence, the subsequent section is based on inspecting the case of Abu Omar to act as a prototype of these types of extra-legal activities.

#### THE ABU OMAR CASE

On 17 February 2003 Hassan Mustafa Osama Nasr (a.k.a. Abu Omar), an Egyptian national with a recognised refugee *status* in Italy, was walking on a street in Milan when a group of CIA agents and an official of the ROS (Luciano Pironi) bundled him into a white van. Abu Omar, suspected of being a terrorist, was immediately transported to the military airbase at Aviano in northern Italy. From there he was sent by Learjet LJ-35 (SPAR-92) to the NATO/US airbase at Ramstein Germany. At the end he was forcedly put on a Gulfstream IV jet and transferred to Cairo Egypt, where he was detained, without charge, for fourteen months. During this period, Egyptian authorities interrogated, mistreated and tortured Abu Omar. In fact, he testified that he was tortured for 12 hours a day for seven months. He was "crucified" on a metal door and on a wooden apparatus, then he suffered electric shocks and he was beaten so much that he lost his hearing. Also the conditions of imprisonment proved a source of severe suffering: Abu Omar lived for more than a year in a narrow cell infested by rats and cockroaches and without a bed to sleep. Throughout his detention, he was fed stale bread and he was denied any contact with the outside world. For fourteen months he could not inform his family of his arrest, he could not speak to a lawyer to defend his rights, he could not read newspapers or listen to the radio to keep informed about current events, he could not read books or magazines or listen to music for leisure.<sup>27</sup>

On 12 May 2004, Abu Omar was released due to lack of evidence, but with the obligation not to leave the country and not to tell anyone the details of the detention. Due to some phone calls that Abu Omar was able to make to his wife revealing the secret transfer and torture, he was arrested again. He was brought before the State Security Investigations (SSI) office in Nasr City, then at the Tora prison, finally to the prison of Damanhur where he was held in administrative detention without charge. In February 2005, Abu Omar was led again to Tora prison where he was put in solitary confinement. Despite Egyptian courts ordered his release sixteen times, the Minister of the Interior continued to update his detention using emergency legislation.<sup>28</sup> In February 2007 Abu Omar was finally released, but some months after two Egyptian agents threatened to detain him if he should continue to tell his story to the *media* and to the human rights organisations. Now he lives in freedom in Alexandria, but continues to bear the consequences of torture suffered:

‘I can’t walk alone in the street. I expect to be kidnapped again, to face fabricated charges or even to be killed... My prison experience has changed my life, as torture left some sternness in me... I am always afraid, and suffer from health problems, tension and eat with greed... I do not want to see or receive visitors. All night long, I suffer nightmares, and all day long I remember torture so I shake...’<sup>29</sup>

This case is particularly interesting both for the mode of the arrest (this is the only case of rendition in which the abduction is made directly by the CIA) and because Ital judiciary has launched a formal investigation to ascertain the responsibilities of those involved (this is the only case of rendition investigated by the Magistracy). In 2005 the judiciary of Milan launched an investigation in this regard and issued arrest warrants for 22 US intelligence operatives involved in the events. These agents, however, remain at large and wanted in Italy and, after issuing an European arrest warrant, even in EU member states. Despite the orders of the Milan Court, two successive Justice Ministers, Roberto Castelli and Clemente Mastella, refused to submit the extradition request to the US for the US officials.<sup>30</sup> The investigations, conducted by the Prosecutors added Armando Spataro and Ferdinando Pomarici, also showed clearly the responsibilities of Italian authorities. Analyses of telephone

intercepts revealed that several officials of the Italian Service for Information and Military Security (SISMI) took part in the kidnapping. Between them appears: General Nicolò Pollari, (then) head of the SISMI, Marco Mancini, (then) head of SISMI's counter-terrorist division and Luciano Pironi, *Carabinieri* officer of the ROS division. The latter testified that he was recruited for the operation directly by the CIA and that he was informed by Robert Seldon Lady, then US consul in Milan and an intelligence agent, that the kidnapping had been organised by US intelligence in collaboration with the SISMI and the Italian Ministry of Interior.<sup>31</sup> Pironi said he had agreed to participate in the kidnapping in the hope, founded on the promise of help from Lady, to be recruited by the SISMI. The Italian agent also said he does not know the other executors of the abduction, two of whom spoke fluent Italian. He had met them only on the day of the "arrest" on the advice of Lady.<sup>32</sup>

The involvement of SISMI and of other Italian authorities in this matter is also confirmed by Stefano D'Ambrosio, former head of the Milan office of the Italian Military Security Service. He told magistrates the content of private conversations that he had with Robert Lady:

the kidnapping of Abu Omar '[...] was a project studied by Jeff Castelli, adviser to the US Embassy in Rome and head of the CIA in Italy, under strict guidelines given to him by the USA, the CIA headquarter in Langley. [...] In Milan a Special Operation Group (Sog) supported by the SISMI comes into action.'<sup>33</sup>

According to what Lady said to D'Ambrosio, the order to pick someone already under investigation by the Digos (General Investigations and Special Operations Division) was strange (General Investigations and Special Operations Division). Abu Omar was, in fact, already controlled by the Italian state police for suspects of terrorism. To continue monitoring Abu Omar could lead him to identify other persons involved in terrorist activities. Lady was also sorry to betray the trust of the Digos that knew nothing of this project.

Therefore, the SISMI not only knew of the plan, it actively participated. Analysis of telephone intercepts of the phone used by Mancini allowed investigators to identify an office, in the heart of Rome, used by the Italian security services for 'covert operations.'<sup>34</sup>

This office is managed by Pio Pompa, a former employee of Telecom and in close contact with Pollari. Pompa managed extra-legal dossiers escaping control criteria to which even the secret services should submit and containing either true and false information on politicians, journalists, magistrates and businessmen. These dossiers were used to threaten or discredit prominent figures of convenience. Specifically, Pompa was illegally appointed to investigate the Milan Prosecutor on the Abu Omar case, as well as to manage relationships with journalists willing to publish true or false news in order to corroborate the work of the SISMI and to discredit anyone who criticised the secret services. One of these sympathetic journalists was the (then) director of the Italian newspaper *Libero*, Renato Farina. The latter continuously informed Pompa on physical movements and contacts of the Public Prosecutor of the Abu Omar process, Armando Spataro.<sup>35</sup>

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False pieces of news were then disseminated to obstruct investigations and mitigate the responsibilities of the SISMI. Consider the false information that the Digos of Milan was aware of the kidnapping and had suspended the monitoring of Abu Omar in order to allow the action.<sup>36</sup> The investigation on Abu Omar has been continually obstructed by threats, false leads and the contamination of evidence. For instance Claudio Fava, an Italian Member of the European Parliament who was then at the head of a Commission of Inquiry about the CIA secret flights, has had his life threatened on numerous occasions.

Despite all this, Italian Magistrates have been able to continue the investigation and to collect evidence against those responsible for the kidnapping. It is not by chance that in 2006 the Milan Magistracy started to investigate an additional 5 US officials<sup>37</sup> and issue a new order for custody for two senior officials of the SISMI, Marco Mancini and Gustavo Pignero.<sup>38</sup> Also the chief of the SISMI, Pollari, was suspected and investigated by the Milan Procure. In the courts, he denied any responsibilities for the incident saying he was not even aware of the kidnapping. He also made use of the right to remain silent and appealed to the State secret place by the Berlusconi Government and reconfirmed by the subsequent Prodi Government. According to what Pollari said, his innocence was contained in the documents covered by secrecy, so he could not say anything and he had to renounce his own defense.<sup>39</sup> Pollari's

pleas, however, proved to be very weak. As established by Italy's Supreme Court, the kidnapping of a person is a crime so serious that declaring evidence in such cases as secrets of national security does not prevent further investigations. The latter are considered to be valid if judges are able to gather sufficient evidence to ascertain the facts without using the documents covered by State secrets. The only documents covered by secrecy were those relating to: (1) the relationships between Italian and foreign intelligence services (such as the exchange of information, acts of mutual assistance,) and (2) the organisational and operational structure of the SISMI. Besides these records state secrets declaration did not work.<sup>40</sup> The Magistracy proved the involvement of the head of SISMI using a recording secretly made by Mancini while he was talking to Pignero. The latter said that the order to render Abu Omar was given by Pollari who had also handed over to him a list of names of people (ten names including Abu Omar) that should have been "arrested" secretly. That list was compiled by the US intelligence.

In addition to the question of the presence and extension of state secrets, other events have hindered the investigation process. In 2007, the denunciations submitted by the former Republic President Francesco Cossiga and Pollari against the Milan Chief Prosecutor Manlio Claudio Minale, the Prosecutors Armando Spataro and Gustavo Pomarici, the judge of the preliminary investigations judge Enrico Manzi and the police officers who have dealt with the inquiry on Abu Omar case, have launched a criminal investigation in Brescia. The charges were: 'dissemination of information covered by the State secrecy; procurement of information relating to State secrecy; and others similar crimes.'<sup>41</sup> On 4 December 2007, the judge of Brescia dismissed the proceedings on the grounds that 'no violation of the law has been committed' by the Milan Prosecutors or other officials.

Despite obstacles, the process has been concluded and sentences passed by the judge Oscar Magi: (1) for 22 CIA agents five years' imprisonment and for Robert Seldon Lady eight years' imprisonment; (2) for the SISMI officials Pompa and Seno - accused of abetting - three years in jail and disqualification for public office for five years; (3) top officials of the SISMI, Nicolò Pollari, Marco Mancini, Giuseppe Ciorra, Raffaele Di Troia, Luciano Di Gregori, were exempt from prosecution because, even if though the case against

them commenced lawfully, it was unable to be completed state secrets; (4) for high-ranking CIA agents, Jeffrey Castelli, Betnie Medero, Ralph Henry Russomando, prosecution was suspended due to the diplomatic immunity they enjoyed. All defendants found guilty were also sentenced to pay a provisional compensation of € 1 million to Abu Omar and € 500 thousand to his wife Ghali Nabila, in addition to damages to be settled in civil courts and legal costs incurred by them.<sup>42</sup> These sentence have been increased by the Court of Appeals which, in 2010, have raised the punishment to nine years for Lady and to seven years for the others CIA agents.<sup>43</sup>

The trial of Abu Omar and the ruling of judge Magi was a test of the Italian Magistracy which has ascertained the truth of the facts and identified those responsible for the false imprisonment of Abu Omar. Even with respect to officials covered by diplomatic immunity or by state secret, the sentence has shown that there were elements to incriminate them. The hearing court and evidence collected also revealed the political responsibility for the Italian case of rendition. In particular, the Italian political *élites* are liable for not having performed the duty to protect all those residing on its territory from human rights violations and for having allowed state officials to be involved in severe abuses. Moreover, the military and political establishment of Italy is accountable for having deliberately chosen to participate in the renditions proposed by the CIA and for having tried to hinder investigations into those.

Furthermore, the Abu Omar case has encouraged deeper understanding of what extraordinary rendition consists of beyond the jargon of sterility: violence, abuse and tortures; the involvement of various sectors of society in opaque operations; can internal and international political connivance.

Finally, it is important stress that the Abu Omar story is the only case of rendition investigated in Italy. Other cases were initiated on personal initiatives of rendition victims. For instance Maher Arar, a Canadian citizen with Syrian origins illegally arrested in 2002 (see annex below), was been the first rendition victim to sue the Bush Administration. Unfortunately, the US Federal Court in 2006 dismissed this lawsuit citing the need for national security and secrecy in making its decision, and raising the possibility of the Canadian complicity in the decision to transfer Marar to Syria where he was tortured for almost a year.<sup>44</sup>

Think also of the case of Khales el-Masri (see annex), a Lebanese resident in Germany rendered in 2003 at the Serbian-Macedonian border, who has lodged (2009) a case against Macedonia at the European Court of Human Rights. In his lawsuit, el-Masri has accused Macedonian authorities of being directly involved in his unlawful arrest and detention in Macedonia, of being responsible for his mistreatment in prison and of having handed him over to the CIA with knowledge that he would be transferred to Afghanistan and risk of torture. Macedonia immediately denied that el-Masri was held in prison on its territory and transferred him to CIA agents, underling that a domestic Parliamentary inquiry made in 2007 concluded that the intelligence officials had not abused their powers with regard to his detention. El-Masri has also tried to sue the US. The US Courts, however, have dismissed his case on the grounds of state secrets. Also a German Parliamentary inquiry has denied any accountability of either the German Government and intelligence agents for violations against el-Masri.<sup>45</sup>

Finally, the cases of Ahmed Agiza and Mohammed Alzery, two Egyptians asylum seekers in Sweden arrested in 2001 (see annex). In 2005 the UN Committee Against Torture (CAT) found that Sweden had violated the Convention in relation to rendition cases. According to CAT, Sweden's Government failed to provide sufficient safeguards for the two men against the risk of torture after their transfer to Egypt. CAT also concluded that Agiza had suffered cruel, inhuman and degrading treatment at the hands of foreign officials on Swedish territory with the connivance of local police. In 2008, the Swedish Chancellor of Justice ordered compensation of € 307 thousand to be paid to Agiza and Alzery. Regrettably, Sweden has not yet provided reparation to the men.<sup>46</sup>

## CONCLUSIONS

The case of Abu Omar has facilitated enhanced knowledge of the operational modes of rendition, and to better understand the types of the networks which support such covert actions and the reasons of the secret complicity between different countries. Covert links are not an unprecedented element of the "war on terror," but have a longer history – (re: the US-UK intelligence agreements signed in 1948, or the ties between German and US secret services in the

1960's.<sup>47</sup> – However, such ties may be contradictory and incriminating. Actually, covert cooperation between intelligence services has several advantages for each partner: reduction of economic and political costs for each implemented operation; replacement of diplomatic ties where they do not exist; compensation for deficiencies of various kinds. In the Italian and European cases it seems that the political élites have chosen to cooperate secretly with the CIA and maintain a publicly critical position about the covert actions undertaken by the US, in order to address terrorism by using coercion and even by violent methods without betraying, at least publicly the democratic values their states supposedly stand for.

The more general analysis of extraordinary rendition has furthermore highlighted some aspects of the counter-terrorism strategies adopted by different US Administrations over the past fifteen years, making it possible to grasp the objectives and consequences of the programme in itself. Political decisions mainly founded on the concern for national security and on the need for urgent actions also violating the human rights have proven unsuccessful and counterproductive. For instance, the use of coercive and violent interrogations in order to quickly obtain information has produced only false confessions which have consequently stimulate inadequate operational decisions. The use of violence proved to be profoundly contrary to democratic values.

TABLE I. DOCUMENTED CASES OF EXTRAORDINARY RENDITION

Name	Profile
Jamil Qasim Said Mohammed	<p>At 0100h on <b>23 October 2001</b> Mohammed, a Yemeni student, in an empty corner of Karachi airport was arrested by <b>Pakistan's</b> intelligence agency. Pakistan surrendered him to US authorities. Mohammed was a suspect in the USS Cole bombing. The US flew him to Amman, <b>Jordan</b> on a private Gulfstream jet. According to the 2001 State Department human rights report for Jordan, prisoners there made allegations of 'methods of torture include sleep deprivation, beatings on the soles of the feet, prolonged suspension with ropes in contorted positions, and extended solitary confinement.'</p> <p>(Source: Rajiv Chandrasekaran and Kamran Khan, "Cole Suspect Turned Over by Pakistan," <i>Washington Post</i>, 28 October 2001; Paglen and A. C. Thompson, <i>Kidnappés par la CIA</i>)</p>

<p>Ibn al-Cheikh al-Libi</p>	<p>On <b>11 November 2001</b> al-Libi was arrested in <b>Pakistan</b> and sent, by CIA agents, to <b>Egypt</b> for harsh questioning. He was suspected of running al-Qaeda's terrorist training camps in Afghanistan. He died in a Libyan jail. But it is unclear whether he has committed suicide or whether he was murdered.</p> <p>(Source: McCoy, <i>A Question of Torture</i>; Dana Priest, "Al Qaeda Link Recanted, Captured Libyan reverses Previous Statement to CIA, Officials Say," <i>Washington Post</i>, 1 August 2004)</p>
<p>About Faisal and Abdoul Aziz</p>	<p>Arrested in <b>December 2001</b> in <b>Pakistan</b>. Their nationality is not known. Faisal and Aziz had been described as 'battlefield detainees' held by US troops in Afghanistan, many of whom 'have been or are being interrogated by CIA, Defense Intelligence Agency, FBI and Army officials.'</p> <p>(Source: Bradley Graham and Walter Pincus, "Al Qaeda Trainer in US Hands," <i>Washington Post</i>, 5 January 2002.)</p>
<p>Ahmed Agiza and Mohammed Alzery</p>	<p>Agiza and Alzery, two Egyptians asylum seekers in <b>Sweden</b>, were arrested on <b>18 December 2001</b> at Bromma airport by Swedish police agents who surrendered them to US officials. The two men had been transported by the CIA to <b>Egypt</b>, and surrendered to local authorities. They had been subjected to torture, harsh interrogations, abuse and they had been threatened with reprisals against their families. Agiza and Alzery were suspected of being involved in terrorist activities. In October 2003 Alzery was released without charges. But he remains under surveillance of the Egyptian police. Agiza, despite severe physical conditions, was sentenced to twenty-five years in prison. In May 2004 Alzery and Agiza sued the Swedish government.</p> <p>(Source: Human Rights Council, <i>International Commission of Jurists submission on the universal periodic review of Sweden</i>, November 2009 Human Rights Watch (Report by), <i>Sweden Violated Torture Ban in CIA Rendition</i>, 2006. Accessed 19 January 2011, &lt;<a href="http://www.hrw.org/en/news/2006/11/09/sweden-violated-torture-ban-cia-rendition">www.hrw.org/en/news/2006/11/09/sweden-violated-torture-ban-cia-rendition</a>&gt;)</p>
<p>Muhammad Saad Iqbal Mandi</p>	<p>Mandi disappeared from <b>Jakarta</b> on <b>11 January 2001</b>, then, without a court hearing, was sent to <b>Egypt</b>, on a private US Gulfstream jet. He was suspected of maintaining connections with terrorism. Mandi was released in 2008, after six years of imprisonment. His government said that he would not face any criminal charges. On 19 August 2009, the UK arm of the legal charity Reprieve commenced legal action on behalf of Mandi, against the UK Foreign Secretary.</p> <p>(Source: Rajiv Chandrasekaran and Peter Finn, "US Behind Secret Transfer of Terror Suspects," <i>Washington Post Foreign Service</i>, 11 March 2002; <i>R Mandi Vs. Secretary of State for Foreign and Commonwealth Affairs</i>, 2009)</p>

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<p>Mamdouh Habib</p>	<p>On <b>2 October 2001</b>, Habib, an Australian National, was arrested in <b>Pakistan</b> by the local police agents, then he was delivered to US officials who flew him to <b>Egypt</b> where he was interrogated and severely tortured. After six months he was sent to <b>Guantánamo Bay</b>. In January 2005 Habib was released and transferred to Australia. In December 2010 he received a secret sum in exchange for absolving the Australian government of liability in his torture case. Habib now plans to use the money to begin an international proceedings against Egypt and the US.</p> <p>(Source: Raymond Bonner, "Detainee says He was Tortured while in US Custody," <i>The New York Times</i>, 13 February 2005; <i>Habib vs. US and Egypt</i>, SMH, 9 January 2011)</p>
<p>Abd al-Salam Ali al-Hila</p>	<p>On <b>19 September 2002</b>, Al-Hila, a Yemeni business man, disappeared in <b>Egypt</b>. He was sent to Baku, <b>Azerbaijan</b> for two months, then he was transferred to <b>Afghanistan</b>. After sixteen months US authorities sent him to <b>Guantánamo Bay</b>.</p> <p>(Source: Human Rights Watch (Report by) (2005), <i>Guantánamo: New "Reverse Rendition" Case: A Detainee Captured in Egypt Disappeared in US Custody</i>, Marc 30, 2005. Accessed 10 June 2011, &lt;<a href="http://www.hrw.org/english/docs/2005/03/29/usint10382.htm">http://www.hrw.org/english/docs/2005/03/29/usint10382.htm</a>&gt;)</p>
<p>Adil Al-Jazeerai</p>	<p>Adil al-Jazeerai, an Algerian national, was arrested on <b>17 June 2003</b> in <b>Pakistan</b> by local authorities accompanied by FBI's agents. He was suspected of being an al-Qaeda "facilitator." Al-Jazeerai was interrogated and subjected to torture while he was in Pakistani detention. On 13 July 2003 US officials sent him to the Bagram Air Base in <b>Afghanistan</b>. It has been reported that he has 'possibly' been transferred to <b>Guantánamo Bay</b>.</p> <p>(Source: Amnesty International, <i>Securing a Commitment to Human Rights in Canada's Security Laws and Practices</i>, 14 June 2004. Accessed 08 June 2011, &lt;<a href="http://www.amnesty.ca/human_rights_issues/maher_arar_overview.php">www.amnesty.ca/human_rights_issues/maher_arar_overview.php</a>&gt;)</p>
<p>Abdallah Tabarak</p>	<p>In <b>December 2001</b>, Tabarak, a Moroccan national, was arrested in <b>Pakistan</b> by the local agents, then he was surrendered to US officials. He was transferred to <b>Afghanistan</b>, then to <b>Guantánamo Bay</b> detention center. In the US facility, Tabarak was interviewed both US and Moroccan officials. In 2004 he returned to Morocco where he was released on bail. Neither the US nor the Moroccan government will offer any explanation for his release.</p> <p>(Source: Craig Whitlock, "Al Qaeda Detainee's Mysterious Release. Moroccan Spoke Of Aiding Bin Laden During 2001 Escape," <i>Washington Post</i>, 30 January 2006)</p>

<p>Khaled el-Masri</p>	<p>In <b>February 2003</b>, el-Masri, a German citizen of Lebanese descent, was arrested at the <b>Serbian-Macedonian border</b> by local police. He was suspected to have connections with Islamic extremist groups. During the detention he was repeatedly interrogated by Macedonian officials, he was beaten, blindfolded, stripped, shackled. After 23 days of detention, el-Masri was transported to <b>Afghanistan</b> where he was beaten, sodomise with objects, hooded and interrogated for days by local agents with the collaboration of US officials. In may 2004 he was released without formal charges.</p> <p>(Source: Amnesty International, <i>Current Evidence</i>; Marty, <i>Alleged secret detention</i>)</p>
<p>The Algerian Six (Bensayah Belkacem; Hadj Boundellaa; Saber Lahmar; Mustafa Ait Idir; boume-diene Lakhdar; Mohamed Nechle)</p>	<p>In <b>October 2001</b>, six Bosnian of Algerian origin were arrested by order of the Supreme Court of the <b>Federation of Bosnia and Herzegovina</b> and detained on remand. They were suspected of being involved in the planning of bomb attacks on American and British Embassies.</p> <p>In 2002 the Bosnia's Supreme Court ordered to release them for lack of evidence. Despite this, Bosnian police surrendered them to US authorities, who transferred them to <b>Guantánamo Bay</b>.</p> <p>On 21 October 2008 US District Court Judge R. J. Leon ordered of the released of the five Algerians held to Guantánamo and to continued detention of the sixth, Bensayah Belkacem.</p> <p>(Source: William Glaberson, "Judge Declares Five Detainees Held Illegally," <i>New York Times</i>, November 20, 2009; Amnesty International, <i>Six cases of rendition</i>)</p>
<p>Bisher Al-Rawi and Jamil El-Banna</p>	<p>In <b>November 2002</b> Al-Rawi and El-Banna, two British permanent resident, was arrested in Gambia and transferred to <b>Afghanistan</b>, then to <b>Guantánamo Bay</b>. This arrest was made by British M15 cooperation with the CIA.</p> <p>They were suspected to have links with a leading Islamist, Abu Qatada.</p> <p>The families of the two men brought an action to obligate the British Government to diplomatic pressure on the USA in order to make sure the release of Al-Rawi and El-Banna.</p> <p>In 2007 Al-Rawi was released.</p> <p>(Source: Amnesty International, <i>Six cases of rendition</i>)</p>

<p>Maher Arar</p>	<p>On <b>26 September 2002</b>, while in transit at J.F.K. Airport in <b>New York</b>, Arar (Canadian citizen Syrian origin) was arrested by US agents.</p> <p>For two weeks, he was detained in a high-security prison and he was interrogated by the FBI and the American immigration service without the permission to contact a lawyer. Then he was transferred (via Washington, Rome and Amman) to <b>Syrian</b> military intelligence prison.</p> <p>He has been bound with electrical cables, interrogated, beaten, tortured.</p> <p>In October 2003 he was released without charges. The following January Arar, with the support of the Constitutional Rights Center, sued US Government.</p> <p><i>(Source: Amnesty International, Securing a Commitment to Human Rights; Marty, Alleged secret detention)</i></p>
<p>Messrs Bashmila and Ali Qaru</p>	<p>In <b>October 2003</b>, the two men disappeared in <b>Jordan</b>. They were held in secret American detention centers, probably in three different countries. Bashmila and Qaru said that they were in <b>Afghanistan</b> and somewhere in <b>eastern Europe</b>.</p> <p>In May 2005 they returned home, probably from <b>Yemen</b>.</p> <p><i>(Source: Marty, Alleged secret detention)</i></p>
<p>Mohammed Zammar</p>	<p>In 27 October 2001, Zammar, a German of Syrian origin, had left Germany to go to <b>Morocco</b>. When he attempted to return to Germany in <b>December 2001</b>, he was arrested by Moroccan agents and he was interrogated by Moroccan and US officials. Then, he was transferred to <b>Syria</b> where he tortured by Syrian services and questioned by the German agents.</p> <p>This arrest has been achieved thanks to the information given by the German services.</p> <p>Zammar was suspected to have connections with “Hamburg cell” of al-Qaeda.</p> <p>In May 2007 the UN WGAD, which examined the case, said that Mr. Zammar had been arbitrarily detained and it asked for details about the destiny of the man. No answer was given by the Morocco Government.</p> <p><i>(Source: Amnesty International, Six cases of rendition)</i></p>

Binyam Mohamed al Habashi	<p>Al Habashi, an Ethiopian citizen with resident <i>status</i> in UK, was arrested by <b>Pakistani</b> officials on <b>10 April 2002</b>. Although not charged with anything, he was interrogated by Pakistani, US and UK officials.</p> <p>He was transferred first in <b>Morocco</b>, then in <b>Afghanistan</b> and finally to <b>Guantánamo</b>.</p> <p>In all the secret detention facilities he had been beaten, shackled, sodomised, blindfolded, threatened, tortured.</p> <p>As a result of pressure from British Government, in February 2009 US Foreign Office confirms the release of al Habashi.</p> <p>(Source: Mohamed al Habashi Binyam, accessed 12 June 2011, &lt;<a href="http://news.bbc.co.uk/2/hi/uk_news/7870387.stm">http://news.bbc.co.uk/2/hi/uk_news/7870387.stm</a>&gt;)</p>
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#### NOTES TO PAGES 134-155

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