

Chapter 11

Examining the Legitimacy of US Counterterrorism Measures: Jurisdiction, Human Rights Treaties, and State Responsibility

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ABSTRACT

This chapter meticulously examines the US's legal rationale behind enhanced interrogation techniques and extraordinary renditions post-9/11, about human rights treaties. Amidst heightened security measures, including military interventions and covert operations, accountability for the resultant rights violations remains elusive. The chapter delves into whether these practices align with international human rights standards, with a particular focus on jurisdictional implications. By scrutinizing relevant treaties like CAT and ICCPR, it assesses the legitimacy of US

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arguments and implications for state responsibility. Drawing on jurisprudence since Bankovic, it concludes that individuals subjected to these measures fall under US jurisdiction, warranting accountability for human rights violations. This underscores the enduring challenges within the international legal framework and reiterates the pressing need for accountability.

INTRODUCTION

After the terrorist attacks of September 11, 2001, more and more states have adopted vague definitions of terrorism, which has created a tendency to target individuals or groups such as political resistance movements, religious minorities, and even human rights defenders. On September 17, six days after the terrorist attacks, then-US President George W. Bush signed a classified document, “*The Torture Memos*,” which gave legal authorization to the Central Intelligence Agency (CIA) to carry out a detention and interrogation program, Enhanced Interrogation Techniques (EIT). The program includes unique interrogation methods and extraordinary renditions (Amnesty International, 2011). The quote above is about the prisoner Abu Zubaydah, infamous for being “*the forever prisoner*” who is at Guantanamo Bay. Zubaydah is one of the thousands of living evidence of people who are imprisoned in secret detention facilities, so-called “*black sites*” around the world (Moeckli et al., 2022). Wikileaks, which previously published classified information, has also revealed documents showing that the United States has, for several years, knowingly imprisoned hundreds of innocent people in Guantanamo. Reports provide evidence that at least 22 detainees have been minors at the time they were captured and confined at Guantanamo. According to the United States, the prison camp consists only of “*high-value detainees*” who are high-ranking in the terrorist organization al Qaeda. On the other hand, information indicates that it is also about people who worked as drivers and security guards for the leader Osama Bin Laden.

The documents state that these people do not have as much influence in the terrorist network and cannot be categorized among the organization’s highest ranks. Whether a person is guilty or innocent, all people have the right to a fair trial which is an inalienable human right. The global community is still pushing today, along with the United States, an agenda to take extraordinary measures to combat the politics of violence that has evolved into the war on terror. The US has long advocated protective measures that include detention, torture, and extraordinary renditions. Deportation of individuals to countries where torture and abuse are likely appears to be challenging to understand and raises the question of what legal reasons underlie the decision. This study focuses on the United States’ extraordinary renditions, which are carried out by outright kidnapping people believed to be associated with terrorism

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