



Permanent Mission  
of the Federal Republic of Germany  
to the Office of the United Nations and  
to the other International Organizations  
Geneva

Ref.: (please quote when answering): **Pol 381.70/14**  
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Note Verbale

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to refer to the letter of the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Vice-Chair of the Working Group on Arbitrary Detention, The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism as well as the Special Rapporteur on torture and other forms of cruel, inhuman or degrading treatment or punishment dated 21 October 2011.

As requested in this letter, the Permanent Mission of Germany encloses to this Verbal Note the answer of the Federal Republic of Germany concerning the Report on Secret Detentions.

Please acknowledge receipt of this Verbal Note at the earliest convenience.

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, November 30, 2011



To the  
Office of the United Nations  
High Commissioner for Human Rights  
Special Procedures of the Human Rights Council  
1211 Geneva 10

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UN Special Rapporteur, Report on Secret Detentions

Comments by the Federal Republic of Germany

Germany has always made it very clear that it does not consider programmes for so-called rendition and secret detention of persons to be a legitimate instrument in the fight against international terrorism. The democracies of the West will prevail in the fight against international terrorism only by trusting in our fundamental moral values and convictions and by respecting human rights as the guiding principle of our political action.

The United Nations report of 26 January 2010 found that German government agencies were not involved, neither directly nor indirectly, in such renditions or secret detention by other countries. This was also the conclusion of an internal government investigation into the role of Germany and German government agencies in the context of fighting international terrorism, which was included in the Federal Government's report to the Parliamentary Control Panel of the German Bundestag in January 2006.

In addition, on 7 April 2006 the German Bundestag established a parliamentary investigation committee to examine, among other issues, Germany's role in the context of the so-called rendition and secret detention of persons. This committee came to the conclusion that, with regard to the matters investigated in relation to the fight against international terrorism, the Federal Government, its employees and the subordinate agencies at all times acted in compliance with existing law. The findings of this parliamentary investigation were discussed by the German Bundestag on 2 July 2009 and unanimously noted.

In summer 2007, the investigation committee appointed Dr Joachim Jacob, former Federal Commissioner for Data Protection, to investigate whether the Federal Government had any knowledge of CIA transport of prisoners via German territory or

of any secret CIA prisons related to such transports. Dr Jacob presented his report on 31 March 2008. In summary, it should be noted that the report confirmed the Federal Government's description of its knowledge of alleged CIA transports in Germany. There is no evidence that the Federal Government had any knowledge of CIA prisoner transports prior to media reports in late 2004/early 2005. Two transports through German airspace were confirmed.

Furthermore, various other investigations were initiated in Germany. For example, in the case of Khaled el-Masri, the Memmingen public prosecutor opened an investigation of persons unknown on suspicion of abduction under Section 234a of the German Criminal Code (StGB); this investigation was later taken over by the public prosecutor's office Munich I. Khaled el-Masri was arrested in Macedonia on 31 December 2003, taken to Afghanistan and unlawfully imprisoned by U.S. forces until 28 May 2004. In January 2007, the Munich public prosecutor issued arrest warrants for 13 suspected CIA employees. Following extensive investigations, there was enough evidence that these persons were involved in el-Masri's abduction to constitute strong suspicion and justify the issuing of international arrest warrants with international alerts. Should these suspects travel to Europe, they would be arrested immediately.

German institutions conscientiously investigated the possible prisoner transports across German territory. Once evidence was confirmed that Abu Omar was transported as a prisoner via German territory, the Zweibrücken public prosecutor responsible for Ramstein immediately opened a criminal investigation on 19 July 2005. However, the investigation on suspicion of deprivation of liberty and other offences had to be terminated on 21 January 2008 in accordance with Section 170 (2) of the Code of Criminal Procedure (StPO) as it was impossible to identify an offender. It was impossible to determine which of the accused CIA agents in Italy were involved in the flight to Ramstein. The U.S. authorities were not willing to provide the necessary information to assist the investigation. The Milan public prosecutor's requests for mutual assistance addressed to the American authorities were unsuccessful.

Germany also intensively investigated whether the U.S. ran secret prisons on German soil in which terrorist suspects were held and tortured. At the request of the Federal Public Prosecutor's Office, the Federal Criminal Police Office (BKA) investigated the vague assertions of ostensible witnesses but was unable to confirm them. The Federal Public Prosecutor's Office decided on 2 February 2007 to terminate the investigation.

The Federal Government regards its respect for court decisions as self-evident. In its decision of 17 June 2009, the Federal Constitutional Court made fundamental statements regarding the procedure for the submission of records and issuance of the permission to give evidence; these statements are to be taken into account in the future interpretation of the German Bundestag's right of information and investigation.

In addition, in implementing a recommendation of the parliamentary investigation committee, a reform to monitor the activities of the German intelligence services was initiated which improves the existing monitoring mechanisms without endangering the ability of the German security authorities to function.