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*Directorate-general F
Press
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Protocol*

*Unit II - Communication
-Public Information Service*

Rue de la Loi 175
1048 Brussels
BELGIUM

www.consilium.europa.eu/infopublic

Dear Mr. Ottmann,

Thank you very much for your email of 16 September 2008 and for clarifying your different requests for information. This was useful for us in reviewing your request.

Below, you will find answers to your public information queries, in application of the code of good administrative behaviour for the General Secretariat of the Council.¹ Your requests for documents under Regulation (EC) No 1049/2001 will be dealt with separately.

In the context of the political dialogue between the EU and the US, the EU has raised concerns regarding the respect of international law, including human rights law and international humanitarian law.

On the question of **alleged rendition flights** it is important to note that the supervision of intelligence and security service activity on the territory of Member States is a matter of Member State competence.

As regards the communication between the EU Council and the US Government on the subject of "rendition", we would like to draw your attention to the letter of 29 November 2005 by UK Foreign Secretary, Jack Straw, to US Secretary of State, Condoleezza Rice², to which Mrs. Rice responded in a public declaration at Andrews Air force Base on 5 December 2005 before departing for Europe

(<http://www.state.gov/secretary/rm/2005/57602.htm>).

¹ OJ C 189, 5.7.2001, p. 1.

² This document is attached as an annex to the letter, which General Secretariat has sent to you in reply to your requests for access to documents of 16 and 22 July 2008.

There have indeed been European requests for information, to which Secretary Rice replied in her public statement. *"We have received inquiries from the European Union, the Council of Europe, and from several individual countries about media reports concerning U.S. conduct in the war on terror. I am going to respond now to those inquiries, as I depart today for Europe. And this will also essentially form the text of the letter that I will send to Secretary Straw, who wrote on behalf of the European Union as the European Union President....."*

Furthermore, Legal Advisers from the Ministries of Foreign Affairs of the EU Member States, with the assistance of the EU Council Secretariat and the European Commission, and the Legal Adviser of the US State Department have been engaging in an in-depth dialogue on international law and various aspects of the counter-terrorism effort. The aim of the dialogue is to foster mutual understanding and to discuss improved ways of safeguarding human rights in the effort to counter terrorism. The dialogue encompasses complex legal issues under international law such as the rights of detainees apprehended in the course of the fight against terrorism.

The dialogue has highlighted the legal problems arising from the fight against terrorism. Although the dialogue has shown that there are differences of opinion between the US and the EU, it is allowing both parties to learn about the developments and the legal obligations within the EU and the US on these matters. The dialogue is contributing to a better understanding of how the fight against terrorism should be carried out with respect for the rule of law and international law, including international human rights law.

The EU's position is expressed inter alia in EU's Guidelines on Torture, the EU's IHL guidelines and the Council Conclusions of December 2006: "The Council reiterates that human rights, refugee law and international humanitarian law have to be respected and maintained when combating terrorism. The Council will continue to follow closely developments with regard to human rights in combating terrorism and take adequate measures for their protection. The EU remains firmly committed to the absolute prohibition of torture, cruel, inhuman or degrading treatment and punishment. It guides our own actions and we raise our concerns with third countries. The existence of secret detention facilities where detained persons are kept in a legal vacuum is not in conformity with international humanitarian and human rights law."

There has not been any written communication between the EU and the US about "rendition" specifically. However, EU views on international law principles applicable to the fight against terrorism have been shared with the US, to which the US has responded. US State Department Legal Adviser Bellinger has widely spoken and published on US positions regarding the interpretation of international law in the fight against terrorism.

Regarding your second request about Council minutes and records about the "rendition programme": There have not been specific meetings devoted to the topic, but it was raised in some sessions of the informal EU-US dialogue on international law.

In 2006, some meetings took place in troika format. A report has been drawn up on one of these meetings.

We hope that this provides useful elements regarding your request.

Yours sincerely,

Public information service

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