

CONDI AND KHALID EL-MASRI: PERHAPS WE'RE NOT THE ONES TO TEACH AFGHANS ABOUT RULE OF LAW?

I chuckled to myself when I read Steven Aftergood's post on our efforts to instill rule of law in Afghanistan. Not that I don't support the goal, mind you. But I question whether the United States is in a position anymore to be teaching others about rule of law. Consider this quote from the DOD status report on Afghanistan:

The latest survey of Afghan perceptions of the Afghan Government's rule of law capacity shows an almost 7 percent decline in Afghans' confidence in their government's ability to deliver reliable formal justice. This is likely due to continued corruption and to the slow progress in hiring and placing justice professionals at the provincial level.

To begin with, we're having our own problems with hiring and placing justice professionals.

But it's things like this cable that make it really clear we shouldn't be the ones to teach Afghans about rule of law. After the United States kidnapped Khalid el-Masri and sent him to the Salt Pit—which the US has insisted was under Afghan custody to avoid prosecuting Gul Rahman's killers—he was tortured and ultimately dumped back in Macedonia. El-Masri tried to sue the CIA for his treatment, but that was of course dismissed using state secrets. And then in 2006-2007, as Germany tried to conduct its own investigation into el-Masri's kidnapping, the US applied heavy pressure to get the Germans to withdraw warrants for the arrest of el-Masri's kidnapers.

Which brings us to this cable.

Just as the German prosecutor issued arrest warrants for 13 CIA personnel, Condi Rice and Germany's Foreign Minister Frank-Walter Steinmeier met in DC for a discussion of Mideast peace efforts. After they met, Steinmeier told the German press that Condi had assured him that the arrest warrants wouldn't affect German-US relations.

Steinmeier told the *Welt am Sonntag* newspaper that he had raised the issue with US Secretary of State Condoleezza Rice, who "assured me there would be no negative impact on German-American relations."

Steinmeier, whose remarks were released a day ahead of publication on Sunday, said he told Rice the warrants could only be served in Germany at present, but the government expected the court to issue international warrants at some stage.

The cable describes a February 6, 2007 meeting in which the Deputy Chief of Mission of the US Embassy in Germany, John Koenig, "corrected" the impression that Steinmeier had gotten from his meeting with Condi the week before.

In a February 6 discussion with German Deputy National Security Adviser Rolf Nikel, the DCM reiterated our strong concerns about the possible issuance of international arrest warrants in the al-Masri case. The DCM noted that the reports in the German media of the discussion on the issue between the Secretary and FM Steinmeier in Washington were not accurate, in that the media reports suggest the USG was not troubled by developments in the al-Masri case. The DCM emphasized that this was not the case and that issuance of international arrest warrants would have

a negative impact on our bilateral relationship. He reminded Nickel of the repercussions to U.S.-Italian bilateral relations in the wake of a similar move by Italian authorities last year.

Koenig goes on to note that the government would have political problems in the US if the Germans issued the international arrest warrants.

The DCM pointed out that the USG would likewise have a difficult time in managing domestic political implications if international arrest warrants are issued.

Now, as Scott Horton notes, one of the most interesting things about this cable is its recipient: Condi Rice.

But the most noteworthy thing about this cable is the addressee—Condoleezza Rice. Might she and her legal advisor, John Bellinger, have had an interest in the El-Masri case that went beyond their purely professional interest in U.S.-German diplomatic relations? The decision to “snatch” El-Masri and lock him up in the “salt pit” involved the extraordinary renditions program, and it seems as a matter of routine that this would have required not only the approval of the CIA’s top echelon but also the White House-based National Security Council. It’s highly likely that Rice and Bellinger would have been involved in the decision to “snatch” and imprison El-Masri. If authority was given by Rice, then responsibility for the mistake—which might well include criminal law accountability—may also rest with her, and this fact would also not have escaped Koenig as he performed his diplomatic duties.

But it’s even better than what Horton lays out,

since this was obviously a hastily called meeting in response to Steinmeier's quotation of Condi's assurances the warrants **wouldn't** cause a problem. Note the specific language Koenig uses:

The DCM noted that the reports in the German media of the discussion on the issue between the Secretary and FM Steinmeier in Washington were not accurate, in that the media reports suggest the USG was not troubled by developments in the al-Masri case.

He's not telling the Germans that Steinmeier was wrong, that he mis-quoted Condi. Rather, Koenig's simply saying that the content—what Condi had said—was wrong.

I agree with Horton that Condi and John Bellinger may well have personal liability in el-Masri's kidnapping and torture. But it appears, in addition, that Condi lied to her German counterpart to create the public appearance that the US had no concerns about the arrest warrants, and then sent her subordinate to correct that statement. That is, Condi used her counterpart to create the false impression that she, personally, had no concerns about the arrest warrants.

So to cover up a crime largely committed by the US in the Afghan's own country, the Secretary of State appears to have lied to her counterpart, and then secretly corrected her lie.

But back to Aftergood's post on what we have to teach the Afghans about rule of law. As he notes, a recent Congressional Research Service report on the topic mentioned a strategy document written under the leadership of Condi's successor at State, "U.S. Strategy for Anti-Corruption in Afghanistan," which is "not available publicly." The report includes the four main pillars of this strategy. And the first of those?

Pillar 1: Tackle the pervasive culture of impunity and improve and expand

access to the state justice sector, by increasing capacity and reducing corruption in the justice sector's institutions;

So you see, Condi's successor's plan to teach the Afghans about Rule of Law **starts** with us telling them they need to "tackle the pervasive culture of impunity" (to say nothing about access to justice, on which we have our own problems as well).

I guess Condi isn't the only Secretary of State saying one thing and then doing another.