



**Speech by Right Hon. Terry Davis  
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**"Do terrorists have human rights?"**

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Thank you very much for inviting me to this conference, which deals with an issue of vital importance for global security and the well-being of people living everywhere in the world.

As you will have noticed, I have chosen a question as the title for my speech. The question is whether terrorists have human rights. Let me end the suspense right from the start. The answer to this question can only be a resolute yes.

But before going further into the substance, allow me to tell you a true story which illustrates the point I am making.

On Sunday 15 August 1994 at around 10 in the morning, a small plane landed at Villacoublay, a military airport outside Paris. On board was a team of agents from the Direction de la surveillance du territoire, or DST, which is the French agency responsible for anti-terrorism and counter-espionage. The handcuffed and hooded prisoner escorted by the DST agents had been captured only hours before in the Sudanese capital of Khartoum. His name was Illich Sanchez Ramirez, better known as Carlos the Jackal, a self-styled revolutionary, a terrorist and a murderer.

Two years later, on 24 June 1996, the European Commission on Human Rights, the predecessor of the European Court of Human Rights, rejected his complaint and ruled that the circumstances of his arrest and transfer to France did not violate the European Convention on Human Rights.

This ruling by a Council of Europe body has been repeatedly used by the highest officials in the American State Department in an attempt to prove that so-called extraordinary renditions

are justified and lawful under international law, including European human rights laws.

This is nothing less than obfuscation.

The decision in the case of Sanchez Ramirez vs. France is only seven pages long and can be read in a couple of minutes. It is available on the Council of Europe website, admittedly only in French, but I find it almost impossible to believe that the entire American State Department has so profoundly misunderstood a straightforward legal ruling as a result of linguistic difficulties.

What Condoleezza Rice's colleagues systematically – perhaps deliberately? – omit in their analogies between the capture of Carlos the Jackal and so-called extraordinary renditions are a few basic details - but very important details. They are details which make the difference between what is legal and what is illegal – between the Rule of Law and the absence of law – between human rights and the lack of human rights. Because Carlos did not disappear, nor did he end up in some Caribbean gulag. He was taken to Paris and brought before a judge, with the right to a lawyer and a fair trial. That was because he was arrested on the basis of a valid arrest warrant, issued before his capture as a result of his alleged involvement in a car-bomb

attack which killed two people and injured 70 others in Paris. In France, an arrest warrant is a piece of paper signed by a judge. It may not seem much, but it makes all the difference. And that difference is the stuff our freedom is made of.

The Commission on Human Rights acknowledged that Carlos may have been arrested and transferred to France in an unusual manner, but this did not change their views on the lawfulness of his detention. And this proves another very important point.

Contrary to the belief of some people, the European Convention on Human Rights is not a collection of lax, ineffectual and utopian principles. It is a body of international law, which was drafted in difficult and uncertain times and has been tested in courts ever since. The Convention balances the rights and freedoms of individuals against the interest of the larger community. It allows for a robust, effective and fair response to the threats faced by society, including terrorism. Europe rejects the bogus choice between security and freedom.

After his arrest, Illich Ramirez Sanchez was given a fair trial and was sentenced to life imprisonment. Today he may be an angry old man, but he is not a martyr. He spends his time

filing complaints through the very system he once set out to destroy. I do not know whether Carlos has atoned for his crimes, but what is important is that he has been deprived of both the opportunity to commit new crimes and the alternative of inspiring other people to follow his example.

There is a message in all that, and it is the message I should like to leave with you today. A really effective fight against terrorism is one which stops more terrorists than it helps to recruit. A really effective fight against terrorism is therefore one which respects and protects human rights and fundamental freedoms rather than sacrifices them in the short-sighted hope that terrorism can be defeated by undermining the very foundations of the society which the extremists want to destroy.

There are two major mistakes which a society can make in the face of terrorist threat. The first is to try to justify it. The second is to underestimate it. Terrorists are ruthless, and they may have some serious psychological problems - but as a rule, they are not stupid.

Terrorism is a complex phenomenon. To fight it, we need a comprehensive approach. Condemnation and suppression are essential, but they are not enough for a long-term solution. We must work to prevent the conditions which help terrorists to enlist new recruits for their criminal cause.

Last April the Council of Europe organised a conference with the title "Why Terrorism?" The Conference aimed at looking into conditions conducive to the spread of political extremism and violence.

Two things struck me about that conference: a small minority of the participants questioned the very purpose of the conference, suggesting that trying to understand why some people turn to terrorism was tantamount to trying to find a justification for their acts. Personally I cannot but wonder how we can prevent and fight a threat if we do not understand it or its causes. The second important thing I noted was that the conditions "conducive to the spread of terrorism" identified by the participants were very specific.

One of these conditions was discrimination, in particular racial discrimination. The conference clearly endorsed the position that anti-terrorist measures which are discriminatory on grounds of race, language, religion, nationality or ethnic origin are counterproductive and ineffective in the long term.

Governments also need to be particularly vigilant to avoid any discriminatory tendencies when dealing with the entry and stay of foreign citizens on national territory – which includes border checks, the issue of residence and work permits, expulsion, extradition and asylum procedures. Areas such as the protection of personal data and, more generally, of private and family life are also involved.

The fact is that the most serious attacks perpetrated on European soil have been carried out by people living, working and raising their families in Europe. Only an infinitely small minority of people make the leap from extremist ideologies to unjustifiable acts of terrorism. Nevertheless, the problem exists, and while seeking to identify and prosecute terrorist networks, Governments must also identify the underlying malaise within society in order to tackle the issue.

Regrettably, terrorists always seem to be one step ahead, and they can easily adjust to suppression. It is crucial to fight against the recruitment, financing and incitement to terrorism through a legal framework and international co-operation, but it is equally important to deal with the conditions conducive to the spread of terrorism.

Some obvious conditions which make possible the spread of terrorism are conflicts, poverty and under-development, violations of basic human rights and the absence of the rule of law. We can never deal with these issues with short-term, simplistic solutions, demagoguery and repression. It is equally dangerous to designate any individual or ethnic or religious group as terrorist. That is really what terrorists want.

The Council of Europe has been protecting and extending human rights, the rule of law and pluralist democracy since 1949. We are determined to combat terrorism because it represents a threat to these fundamental values. We have developed a three-pronged approach: taking legal action against terrorism; safeguarding fundamental values; and addressing the root causes of terrorism.



The Council of Europe Convention on the Prevention of Terrorism entered into force six months ago in June 2007, and it contributes to this objective by increasing international co-operation and enabling a more effective response.

The convention sets out two ways to achieve these aims: first, by establishing as criminal offences some specific acts which may lead to the commission of terrorist offences, namely: public provocation, recruitment and training; second, by reinforcing co-operation both internally through national prevention policies, and internationally through the modification of existing extradition and mutual assistance arrangements. Moreover, it requires Governments to promote tolerance by encouraging inter-religious and cross-cultural dialogue involving, where appropriate, non-governmental organisations and other elements of civil society in the fields of education, culture, media and public awareness-raising. This requirement, which is fully in line with the United Nations Global Counter-Terrorism Strategy Plan of Action of September 2006, aims at preventing tensions which left alone might contribute to the commission of terrorist offences.

We must continue to develop measures to eradicate those conditions which are conducive to the spread of terrorism. We must make every effort to bring communities closer together and to get people to embrace diverse and multicultural societies, which are an essential and invaluable achievement of civilisation. The most efficient way to tackle terrorism is by eliminating the conditions which lead some people – it only needs a few - to resort to terrorism.

In the international community we must all do everything we can to create an environment in which individuals feel they can fight for their rights through their rights. Terrorists are afraid of justice not only because it stops them killing people but also because it deals a deadly blow to their cause. Indeed, some have labelled the fight against terrorism as the ideological conflict of the 21<sup>st</sup> Century, but an ideological conflict cannot be won by force alone. If we want to defeat terrorists, we must remain faithful to our ideas and values. People around the world must know that we are right, and that terrorists are wrong, that we are just, and that they are criminals.

Against this background, I cannot avoid three sensitive and topical issues: the use of torture, the extension of pre-trial detention and the follow-up, or rather the lack of follow up, to the Council of Europe investigations into so-called extraordinary renditions.

The Government of the United Kingdom has repeatedly suggested that the application of Article 3 of the European Convention on Human Rights in expulsion and deportation cases should be revised in the light of current terrorist threats with a view to balancing the risks to national security against the risks to the individual of being ill-treated if he or she were expelled from the United Kingdom.

As a result, the British Government has intervened in three cases before the European Court of Human Rights to advocate a particular point of view about the use of torture. In my view, the Government's position goes against the case-law of the Court which is clear and unequivocal. The Court has consistently and unambiguously affirmed the absolute nature of the prohibition of torture in cases such as *Chahal v. United Kingdom* in 1996 and *Mamatkulov and Askarov v. Turkey* in 2005.

This case-law, which the Court has itself described as “settled”, is reflected in the collective position of the Council of Europe. The Guidelines on human rights and the fight against terrorism, adopted in the aftermath of September 11 by the Council of Europe member states, confirm the absolute character of the prohibition of torture and other forms of ill-treatment.

The issue is not only moral but also practical. Evidence obtained under torture is not only unreliable. It is also useless: Any tribunal which respects fundamental human rights must declare such evidence to be inadmissible.

I cannot stress enough that the prohibition of torture is and must remain absolute. Diplomatic assurances and memoranda of understanding do not constitute adequate safeguards to avert the risk of deportees being subjected to torture or other ill-treatment in the countries of destination. This is particularly so in countries with a poor record of human rights. If these countries fail to respect their obligations under international human rights treaties, how can we be confident that they will respect assurances given on a bilateral basis in a particular case? Or, as the Council of Europe Committee for the Prevention of Torture has pointed out, “The fact that such assurances are sought shows in itself that the sending country

perceives a serious risk of the deportee being subjected to torture or other ill treatment.” And let us be clear about the composition of this Committee for the Prevention of Torture. It consists of 47 men and women – one from each of our 47 member states – elected by the Ambassadors of these 47 member states – in other words, elected by the 47 Governments themselves. Our Committee for the Prevention of Torture is not a self-selected group of starry-eyed idealists. They are responsible people with both experience and intelligence – elected, I repeat, by the Governments of Europe themselves. And our Committee for the Prevention of Torture has said, and again I repeat, “The fact that such assurances are sought shows in itself that the sending country perceives a serious risk of the deportee being subjected to torture or other ill treatment.”

I should also like to comment on the proposals to extend the maximum period of pre-charge detention in the United Kingdom from 28 to 42 days. Here I must be careful because I do not want to be drawn into a domestic political battle, but I will not hide from you that this is a matter of some concern to me, and many of my colleagues at the Council of Europe, not least because the United Kingdom already has one of the longest pre-charge detention periods in Europe.

Of course, I am aware of the differences between the United Kingdom and other European countries with different legal systems and procedures, but the fact remains that detaining someone for a long time without charge is in effect a 'sentence' on someone who may never be charged with any crime.

If the period of pre-trial detention is nevertheless extended, I urge the Government of the United Kingdom to ensure that its application is carefully monitored in order to prevent any discriminatory treatment, which would have counterproductive effects on both community relations and the effectiveness of anti-terrorist policies.

The third and final issue is the attitude of the British Government towards so-called rendition flights and secret prisons. I want to be clear. Investigations by the Council of Europe have not produced any "smoking gun" evidence of involvement of the British authorities in these blatant violations of the European Convention on Human Rights. However, I must say that I am very disappointed by the lack of support from the British Government for my recommendations on how to fill some very serious gaps in human rights protection as

revealed by my own inquiry and the investigations into the practice of rendition by Senator Marty of Switzerland.

It has now been nearly 18 months since these recommendations were sent to the Governments of our 47 member states. Discussions in the Committee of Ministers, which is the decision-making body of the Council of Europe, can only be described as having demonstrated a clear lack of political will to act.

Again, I want to be clear. I have not proposed any additional rights. I have only drawn attention to gaps in the existing legal and administrative measures. I am referring to those legal and administrative measures which can be taken by European Governments to enforce the rights which those Governments are already legally obliged to respect. It is also important to note that Governments – according to the case-law of the European Court of Human Rights are not merely required to take action if they accidentally stumble upon a violation of human rights. They have a positive obligation to do everything within their power to prevent such abuses. It may be argued, therefore, that by failing to act, the Governments are also failing to meet their legally binding obligations under the European Convention of Human Rights.

That is not something we should be ready and willing to accept. I repeat and I emphasise that our Governments have a duty to protect us from the threat of terrorism, but they must do so intelligently, effectively and legally.

This is why I believe that with our insistence on the protection of human rights and fundamental freedoms, the Council of Europe is actually helping them to achieve this objective.