work for many years. And that came up in the minds of many people, even mainstream jurists. It is in the interest of justice. It is about the prohibition of torture. If the prohibition of torture is violated in such a blatant way like it was ten, fifteen years ago, even mainstream jurists now get the point that they have to do something about it. It is very interesting that the same prosecutors who were very disenchanted a decade ago are now asking us for new information regarding witnesses and documents.

And last but not least, we are now about ten to fifteen years after the International Criminal Court in The Hague began its work, and now more and more people in Europe who would subscribe to the project of international criminal justice, and especially the International Criminal Court, got the message from Africa, from Latin America, and from Asia that they are no longer willing to accept double standards in international criminal law. So if no one does anything about Guantánamo, about war crimes in Gaza, they are not willing to let your justice intervene in their affairs. We must do something about the double standards or the project of international criminal justice will not work anymore.

These four reasons together make us act in a different way. In my perspective, I would not describe it as something abroad. No. It is a European agenda.

Alka Pradhan

Amrit, perhaps you can give us a little bit of the background of the cases and how you got involved.

Remarks by Amrit Singh*

Sure. I would just like to second what Wolfgang said in that although the title of this panel suggests that it is about litigating facts relating to the United States in foreign courts, there are other governments involved. The basic fact about the CIA rendition, detention, and interrogation program is that it would not have been possible but for the collaboration of other governments, and certainly, since 9/11, what we are seeing is the perception of a transnational terrorist threat. Accordingly, the responses are also transnational, including the collaboration of various governments beyond the United States, and we are seeing this not only with respect to rendition but more recently with respect to collaboration in various ways in drone killings and also in respect to violations of the right to privacy in the context of mass surveillance programs.

In terms of your question, Alka, how did we bring this litigation, how did it come about. Soon after 9/11, facts started coming out in the public domain about this secret detention and rendition program, and in fact, by 2005, there were reports that Poland and other European governments had hosted secret CIA prisons. By this time, I think by 2005 when Human Rights Watch first disclosed the fact of a Polish secret CIA detention center, the facts about the U.S. torture program had actually already surfaced. The Office of Legal Counsel memos had been publicly disclosed, and then the question arose: Who are these other governments that were cooperating with the United States to make these secret detentions and torture incidents happen?

And so what we were seeing, at least in Europe, there were a series of reports done by the European Parliament and the Parliamentary Assembly of the Council of Europe that emphasized that Europe was seriously involved, that it was involved in serious violations

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of human rights, and that something had to be done about it. But, notwithstanding these reports, very few governments, of course, came forward to admit the truth. What we saw after 2005 was a growing set of facts that implicated a large number of other governments in the CIA's program but very few governments actually coming forward to own up to the truth.

In the meantime, as Alka mentioned early on, there were a number of cases that failed in U.S. courts, either on grounds of the immunities doctrine or the state secrets privilege. Most notably, the case of Khalid El-Masri, in whose case Wolfgang was involved, was dismissed on grounds of the state secrets privilege. The Supreme Court denied certiorari in 2007, and my organization became interested in trying to bring accountability on his behalf before the European Court of Human Rights in a challenge to Macedonia's involvement in the case. The long and the short of it is that that case was filed in 2009, challenging Macedonia's abduction of Mr. Khalid El-Masri, his detention in Macedonia, and then his subsequent handing-over to the CIA, which then took him to Afghanistan and secretly detained and abused him there.

The European court held in 2013 that Macedonia had violated the European Convention on Human Rights, and that Mr. El-Masri's treatment at Skopje Airport in the presence of Macedonian officials and the CIA officials who were essentially prepping him to take him over in a plane secretly to Afghanistan amounted to torture.

Now, what is significant about this case is that although the United States is not party to the European Convention and it is not subject to the jurisdiction of the European court, the court made very strong factual findings, even though it did not hold the United States liable. These findings were particularly important because no U.S. court had thus far ever addressed the issue of U.S. torture on the merits—quite a shocking fact. The primary instigator of torture, the country that adopts a policy in practice of torture, the country with respect to which these facts of torture are now clearly in the public domain, in official U.S. government documents, that government has not been held accountable.

El-Masri v. Macedonia is a landmark decision for putting the facts of U.S. torture, and European collaboration in U.S. torture, in the public domain—squarely acknowledging the fact of Mr. El-Masri's abduction and torture and giving him some measure of justice, which he craved for a long period of time, and which he was denied by U.S. courts.

The logistics, in the case of Mr. El-Masri, were that he was actually released from CIA detention in 2004, and he had already spoken out about his facts. He had said what happened to him, but nonetheless, one of the significant constraints in bringing these cases, less so in the case of Mr. El-Masri because he was actually out of detention, more so in the case of Abd al-Rahim al-Nashiri, another client of ours who is currently detained in Guantánamo, is the fact that there was so much secrecy associated with these operations. Both the U.S. government and the Macedonian government essentially refused to disclose the truth, and the Macedonian government actually lied to the European court in its court papers, said that this never actually happened, that Mr. El-Masri was not detained, despite numerous investigations, including the reports of Senator Marty, including the Bundesstadt report that said that Mr. El-Masri had actually been abducted and tortured in this manner.

The other case that I have been involved in, the case against Poland, Mr. Abd al-Rahim al-Nashiri is currently detained in Guantánamo Bay. He was tortured in Poland. He was secretly held from 2002 until about mid-2003 and subsequently transferred to another CIA detention center from Polish territory. Again, this was a very significant ruling from the European court—holding Poland accountable for violating the European Convention of

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Human Rights. And significantly, in addition to finding a whole host of violations of the European conventions, the court held that Poland violated Article 6 of the European Convention by permitting Mr. al-Nashiri's transfer from Polish territory, despite the substantial risk of a flagrant denial of his right to a fair trial—an issue that is very much alive today. What the court said essentially was that Mr. al-Nashiri was transferred from Polish territory, despite the fact that, at that time, it was known that he would be tried in the military commission system at Guantánamo Bay, and that amounted to flagrant denial of the right to a fair trial. As you know, the military commissions these days are imploding. There are serious questions about whether these commissions are fair, and this issue remains very much live.

Significantly, the court also held that under its obligations under the European convention, Poland had to obtain diplomatic assurances from the United States that Mr. al-Nashiri would not be subjected to the death penalty because it is a violation of the European convention to allow transfer from European territory, whether it is a substantial risk of facing the death penalty—again, a very significant ruling. We hope that there will be some measure of justice with respect to Mr. al-Nashiri's current predicament. Thanks.

Alka Pradhan

Just before we move to Julia, I have two quick questions for Wolfgang and Amrit. Wolfgang, you spoke a little bit about how European interests are implicated in bringing this sort of litigation, but what has been your experience with the political will to carry these cases out? And I know that Julia has some experience with this as well.

And my other question is that, clearly, you have had some success at the European Court of Human Rights, but what is your experience in national courts in Europe?

Amrit Singh

Well, I think the answer to that is it really depends on the country. I think that, for example, with Poland, there is active civil society. There are a number of actors, including the Helsinki Foundation for Human Rights, that have taken a very front-and-center role in bringing transparency and accountability for Poland's role in the program.

Macedonia, regrettably, notwithstanding the European Court's decision, has yet to conduct an investigation into its role in Mr. Khalid El-Masri's abduction and secret detention.

As a practical matter, I think that these court judgments are very significant in and of themselves, but they can certainly be taken forward by domestic constituencies to further entrench the rule of law in circumstances where the court found it was so clearly missing.

Wolfgang Kaleck

There are a lot of political obstacles to these kinds of prosecution and to this kind of litigation. Even if the law is on our side, as we saw again in the *Khalid El-Masri* case, when the Munich court issued thirteen arrest warrants against CIA agents, the Minister of Justice in Germany was not willing to deliver international arrest warrants and extradition requests to the U.S. because they thought that it might harm U.S.-German relations. So that is always an issue in Germany, and also in other European countries.

But I think the way the United States is dealing with these issues has, after all these years, a certain effect because they, for example, never answered the rogatory letters by the Spanish,

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French, and Polish courts, among others. At some point, even European judges have a sense of pride and feel that the judiciary system is being attacked if they are not taken serious.

At the beginning, they were saying, ''You are wrong because although there have been some violations, the United States is a state governed by the rule of law, and international criminal justice is more for Sudan and for Congo.'' That attitude has changed. First of all, people are now aware of the fact that there has been a systematic plan of torture for many years in many different places in the world, that the prohibition of torture—which is really upheld and agreed by most of the members of the judiciary system, at least in Western European countries—is at stake if we do not defend it. Last but not least, the double standards argument is also bothering the judiciary system. If you are constantly accused of exercising double standards, and if equality is the basis of legitimizing the law and you constantly violate it—the legitimization of the whole system, of the International Criminal Court, and also universal jurisdiction, is at stake. I think more and more people within the system, even mainstream people who would have never thought of taking such a case, are now willing to take such a case.

But, still, of course, there are limitations, and this is then about our societies, and I think we have still to work on that. The December torture report contained very interesting data, not only in Europe, but also in Asia and in Latin America. I think some people thought this would be over after a decade. It will not be over. It is not over, and it will not be over, because there are too many people involved. Too many people are still pursuing these issues. At some point, my hope is that even in the United States, there will be some rational people thinking we have to clear this, and we do not have to leave it to European courts, or perhaps in the future to Latin American, African, or Asian courts.

Alka Pradhan

The release of the SSCI report has confirmed a lot of details that organizations that have worked on this for a long time had constructed over time. Julia, I was wondering if you could speak a little bit about—I hesitate to use the phrase ''mosaic theory''—building on the rumors and bits of information that we had about which countries were involved and what the scope of this was and how seriously it was taken.

Remarks by Julia Hall*

Amnesty International made its first call for an investigation into a rendition case on December 18, 2001. It was a case of two Egyptians who were apprehended in Sweden and handed over to the CIA. They were blindfolded, had their clothes stripped off of them, and had sedatives inserted through suppositories. They were chained to the bottom of a plane, and then they were transferred to Egypt, where they were subsequently tortured in detention there. That was not a rumor, and I understand why you use that word because that is the kind of overlay, the narrative that many governments use to describe our concerns about these cases, almost immediately after the events of 9/11 in the United States. It goes back to Wolfgang's point that while we were calling for investigations of real events that were verified and where the circumstances were objective, not subjective, we had very little leverage.

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