

WEB-EXCLUSIVE COMMENT

Canada's Arar probe is a model for Europe



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The Canadian government has been sharply criticized after the disclosure of further elements from Mr. Justice Dennis O'Connor's comprehensive report into the circumstances surrounding the rendition and torture of Maher Arar.

Whatever one thinks about how much of the investigation should be made public, one thing remains clear: Of all the countries to have launched investigations into rendition scandals, only Canada has made a real effort to put right the wrong done to the victim — and in a way that does not endanger its legitimate national-security interests.

Having spent the past two years investigating illegal transfers of detainees and secret detention centres in the Council of Europe member states, I have watched in frustration as some European governments have blocked investigations into terrible injustices carried out in the so-called "war on terror" by claiming that "state secrets" will be revealed.

That the spooks must be allowed to keep some secrets is not in doubt. Yet it is all too easy for a government under pressure, fearful its agents' incompetence or questionable deals with foreign intelligence services will be exposed, to claim national security will

be compromised by an investigation. In circumstances where the full facts necessarily cannot be aired, who can gainsay them?

Here lies the genius of the Canadian approach. In simplified terms, Judge O'Connor, an experienced jurist, was given access to all the information required. Certain documents, which the government considered secret in the interest of national security, national defence or international relations, were examined in a procedure in which both parties were heard but the material was not reproduced in the public version of the report (although attention was drawn to its absence).

With such carefully weighed transparency, Judge O'Connor was able unequivocally to clear Mr. Arar's name, ensuring justice and clearing the way for the compensation due to him, yet exclude the publication of anything that might, in his judgment, threaten the security of Canadians. The important thing — and here we get to the heart of the question — is that the government is not the sole arbiter of what should be regarded as a state secret: Its claims must be evaluated by an independent body. In the Arar case, that principle remains in place, regardless of this week's readjustment; it was, after all, again a judge who ordered that the new material be made public.

In my report to European governments in June — which also exposed proof the CIA had illegally held detainees in Poland and Romania — I called on them to draw inspiration from the work done by the Canadian commission of enquiry to find ways of ensuring accountability while staying secure. Canada is an observer to the Council of Europe, yet, on this point, it is ahead of the full-member states.

I leave it to Mr. Arar himself to explain why accountability is so vitally important: "Accountability is not about seeking revenge; it is about making our institutions better and a model for the rest of the world. Accountability goes to the heart of our democracy. It is a

fundamental pillar that distinguishes our society from police states."

These are impressive words coming from a man who spent 10 months in a foreign prison, in the most abject conditions, including torture, on the basis of misleading information from Canadian agencies.

If only certain European governments recognized the need for accountability as clearly as Mr. Arar does.

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